DAWN OF A NEW ERA: THE UNITED STATES-MEXICO-CANADA AGREEMENT AND THE AUTOMOTIVE INDUSTRY

August 6, 2020
A Word from Our Co-Sponsors
With You Today

DAMON V. PIKE
Principal, International Tax - Customs & International Trade Services, BDO
dpike@bdo.com

TRAVIS FOURNIER
Manager, International Tax - Customs & International Trade Services, BDO
tfournier@bdo.com
Agenda

► U.S. Customs Overview
► USMCA Highlights
► USMCA Rules of Origin
► Duty Mitigation Strategies
► USMCA for Automotive Goods
► Certification Procedures
► USMCA Other Changes
► Q&A
U.S. Customs Overview

U.S. Customs and Border Protection ("CBP")
- One of the world's largest law enforcement organizations, whose focus is the security of U.S. borders and enforcement of U.S. international trade law.
- Fully operational branch of law enforcement with employees ranging from forensic accountants and scientists to uniformed officers and trade specialists.

CBP Centers of Excellence and Expertise ("CEEs")
- Hub of CBP Import Specialist teams among the various CBP ports of entry in the U.S.
- Ten CEEs located around the country, each specializing in an industry and range of commodities.
  - Hence, local CBP port authorities have limited impact on trade compliance matters, but still have complete control of the physical entry of cargo, e.g., seizures, etc.
Staffed with CBP experts from operational, legal, and audit disciplines

Will collaborate with Canadian and Mexican customs authorities

Will provide guidance to public and private stakeholders

Will schedule outreach events, respond to training requests

Will develop and distribute informational resources
“Reasonable Care” Standard

Who is responsible for customs compliance?

- The Importer of Record is principally responsible for using “Reasonable Care” to report accurate information to CBP, pay the correct amount of duty, and maintain all required records.

Risks associated with non-compliance:

- Inadequate internal controls to monitor imports/exports can result in fines, penalties, overpayment of duties, and supply chain delays if goods are held up at the border.
- “My broker did it” is not a valid defense to a penalty case.
- Liability generally flows to the corporate entity acting as the importer of record, but “persons” may also share personal liability for customs violations in future penalty cases. See Trek Leather court case.
USMCA Background

- On Sep. 30, 2018, the U.S., Canada and Mexico announced they had reached a trilateral free trade agreement (in principle), concluding more than 13 months of negotiations.
- The agreement was officially signed by all three parties on Nov. 30, 2018.
- The agreement entered into force on July 1, 2020.
  - Mexico became the first country to ratify USMCA when its Senate approved the agreement on June 19, 2019;
  - The U.S. Congress and Senate ratified the agreement on Dec. 19, 2019 and Jan. 16, 2020, respectively. President Trump signed the agreement into law on Jan. 29, 2020.
Summary of Major Changes

NAFTA
- Certificate of Origin Required
- Wide range of existing rulings for similar goods
- De Minimis: 7%
- Exporter/producer responsible for certification
- No “end date”
- No Labor Wage Content ("LVC") requirement

USMCA
- No Certificate required*
- NAFTA rulings will not apply
- New USMCA Center of Excellence
- De Minimis: 10%
- Importer responsible for certification
- Sunset clause of 16 years with an option for review every 6 years
- Increased Regional Value Content ("RVC") requirements**

* Certification procedures are mentioned below in more detail. Although no certificate is required, certain data elements are required to substantiate a USMCA claim.

** An alternative staging regime allows vehicle producers time to become compliant with the new regulations.
Current NAFTA participants should prepare, solicit data, and qualify products for a “seamless” transition to USMCA. NAFTA rules continued to apply until July 1, 2020. The ripple effects from a lack of preparedness include:

- Unnecessary duty exposure on imports;
  - Both at time of entry and adjustments made on value reconciliation;
- Penalties and fines for claiming duty-free treatment on ineligible goods;
  - Burden is now on the IMPORTER to maintain all supporting documentation;
- Delay in responses to broker requests for USMCA eligibility claims;
- Uncertainty when responding to Customs Form (“CF”) 28 or Verifications; and
- Untimely / erroneous responses to customer solicitation requests.
USMCA Highlights and Thought Leadership

**USING CHINESE-ORIGIN COMPONENTS**

**HQ H305370 (Oct. 11, 2019)**

- “When determining the country of origin for purposes of applying current trade remedies under Section 301... the substantial transformation analysis is applicable.”
  - Nonetheless, the NAFTA Rules of Origin for marking in 19 C.F.R. § 102 et seq. will continue to control the country of origin for marking purposes only; hence, the goods should be marked “Made In Mexico.”

- Thus, when producing in Mexico or Canada with Chinese-origin goods, an additional 25% U.S. tariff may still apply - even if the country of origin for marking is Mexico.

**Energizer Battery, Inc. v. United States, 190 F. Supp. 3d 1308 (2016)**

- The court found that Chinese-origin components used to produce a flashlight had a pre-determined end-use at the time of importation. The assembly process was not complex enough to constitute a substantial transformation. Thus, Energizer’s imported components did not undergo a change in “name, character, or use.”
USMCA Highlights and Thought Leadership

MERCHANDISE PROCESSING FEES ("MPF")

- Originating goods are exempt from US MPF only at the time of entry. (Canada has no MPF, but Mexico does.)
- Tariff codes with a 0% duty rate are subject to MPF.
  - These tariff codes will not include a Special Program Indicator ("SPI") under USMCA.
  - However, the SPI of "S" can be claimed on these duty-free goods to receive the MPF exemption.
  - These claims will be subject to the same certification requirements as a normal USMCA claim.
- MPF will not be refunded on post-importation refund claims.
  - This applies to Post Summary Corrections, Protests, and Reconciliation.
Article 3 of the agreement raised the Regional Value Content ("RVC") requirements:

Increased overall RVC requirement from the current 62.5% to 75% for passenger vehicles and light trucks, phased in over a 5-year period (unless “averaging” is used, which triggers a 3-year phase.

Created an automotive parts RVC in 3 new categories: core parts at 75%, principal parts at 70%, and complementary parts at 65%, over a 5-year period.
Core, Principal, and Complimentary Parts

**CORE PARTS:**
- Engines, transmissions, axles, suspension systems, steering systems, “advanced batteries,” and parts thereof
- Listed in both Table A.1 and Table A.2 of the Automotive Rules of Origin
- No specific HTSUS codes for items on Table A.2

**PRINCIPAL PARTS:**
- Gears, bearings, major electrical components, seats, etc.
- Specific HTSUS codes for these parts

**COMPLIMENTARY PARTS:**
- Tubes, pipes, windshield wipers, etc.
- Specific HTSUS codes for these parts
## TABLE A.2

<table>
<thead>
<tr>
<th>PARTS</th>
<th>COMPONENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENGINE</td>
<td>Heads, Blocks, Crankshafts, Crankcases, Pistons, Rods, Head subassembly</td>
</tr>
<tr>
<td>TRANSMISSION</td>
<td>Transmission cases, Torque converters, Torque converter housings, Gears and gear blanks, Clutches, Valve body assembly</td>
</tr>
<tr>
<td>BODY AND CHASSIS</td>
<td>Major body panels, Secondary panels, Structural panels, Frames</td>
</tr>
<tr>
<td>AXLE</td>
<td>Axle shafts, Axle housings, Axle hubs, Carriers, Differentials</td>
</tr>
<tr>
<td>SUSPENSION SYSTEM</td>
<td>Shock absorbers, Struts, Control arms, Sway bars, Knuckles, Coil springs, Leaf springs</td>
</tr>
<tr>
<td>STEERING SYSTEM</td>
<td>Steering columns, Steering gears/racks, Control units</td>
</tr>
<tr>
<td>ADVANCED BATTERY</td>
<td>Cells, Modules/arrays, Assembled packs</td>
</tr>
</tbody>
</table>
The LVC calculation relies heavily on “high-wage labor costs, and “high-wage material and manufacturing expenditures.”

These materials and expenditures must be produced at “qualifying wage-rate production plants” where the average hourly wage for direct production workers is USD $16.00.

The producer can choose to base the calculation using imported or acquired materials.

Accordingly, we would expect many OEMs to request/confirm this information from their suppliers.

The producer will provide the U.S. Department of Labor with the names, addresses, EINs, and points of contact for whom they rely for the information provided to them.
USMCA Rules of Origin
USMCA Rules of Origin

- The USMCA made updates to the Rules of Origin established under NAFTA.

- Product-specific Rules of Origin determine whether products are eligible for duty-free treatment.
  - Updates to the general Rules of Origin principles under the NAFTA; and
  - Changes to the product-specific Rules of Origin for certain products, e.g., automotive goods, chemicals, steel-intensive products, textiles, etc.
USMCA Rules of Origin (cont’d)

- General Rules of Origin “updated” under the USMCA - a good generally qualifies under USMCA if it was:
  - “Wholly obtained or produced” entirely in the territory of one or more USMCA parties;
  - Produced entirely in the territory provided that the resulting good satisfies the “product-specific rules of origin,” e.g., “tariff shift,” RVC, or product-specific processing requirements;
  - Produced entirely in the territory of one or more USMCA parties exclusively from materials that themselves qualify as originating; or
  - The good meets the “unassembled goods” requirement.*

*The good was imported into the territory of one of the USMCA countries in an unassembled or disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a).
Changes to certain product-specific rules of origin: some USMCA rules are more stringent than NAFTA’s rules. Other rules, e.g., chemicals, could be viewed as more flexible than the NAFTA ones. The list of products below are subject to the revised USMCA product-specific rules.

<table>
<thead>
<tr>
<th>Harmonized Tariff Schedule (“HTS”) Chapters</th>
<th>Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>Certain mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes</td>
</tr>
<tr>
<td>28-38</td>
<td>Certain chemicals, chemical products, pharmaceutical products, fertilizers, dyes, essential oils, soaps, glues, explosives and photographic or cinematographic goods</td>
</tr>
<tr>
<td>39-40</td>
<td>Certain plastics and articles thereof and certain rubber and articles thereof</td>
</tr>
<tr>
<td>73</td>
<td>Certain articles of iron or steel (e.g., welded pipes and tubes, fittings, structures, wires, steel cloth, nails, tacks, and staples)</td>
</tr>
</tbody>
</table>
### USMCA Rules of Origin (cont’d)

<table>
<thead>
<tr>
<th>HTS Chapters</th>
<th>Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>85</td>
<td>Certain electronics and components (e.g. certain monitors and projectors, certain components used in telecommunications equipment, and certain electrical transformers and their parts)</td>
</tr>
<tr>
<td>86</td>
<td>Certain parts of railways or tramway locomotives or rolling stock; containers</td>
</tr>
<tr>
<td>90</td>
<td>Certain liquid crystal display (“LCD”) assemblies</td>
</tr>
<tr>
<td>40, 70, 83, 84, 85, 87, 90, and 94</td>
<td>Certain automotive goods</td>
</tr>
<tr>
<td>42, 50-63, 70, 94, and 96</td>
<td>Textile and apparel goods</td>
</tr>
</tbody>
</table>
USMCA Rules of Origin (cont’d)

TARIFF SHIFT EXAMPLE - ENGINE PUMP

8413.11-8413.82\(1\) A change to subheading 8413.11 through 8413.82 from any other heading; or

A change to subheading 8413.11 through 8413.82 from subheading 8413.91 through 8413.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent where the transaction value method is used; or

(b) 50 percent where the net cost method is used.

<table>
<thead>
<tr>
<th>Item / Material Description</th>
<th>Part Number</th>
<th>Level</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Value</th>
<th>Country of Origin</th>
<th>Tariff Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Pump</td>
<td>AAA</td>
<td>1</td>
<td>$500.00</td>
<td></td>
<td></td>
<td>-</td>
<td>8413.30.1000</td>
</tr>
<tr>
<td>..Sub-Assy</td>
<td>BBB</td>
<td>2</td>
<td>$250.00</td>
<td>1</td>
<td>$250.00</td>
<td>Canada</td>
<td>8413.91</td>
</tr>
<tr>
<td>..Steel Tube</td>
<td>XYZ</td>
<td>3</td>
<td>$50.00</td>
<td>5</td>
<td>$250.00</td>
<td>Germany</td>
<td>7303.00</td>
</tr>
</tbody>
</table>
USMCA Rules of Origin (cont’d)

**RVC EXAMPLE - ENGINE PUMP**

8413.11-8413.82 \(^1\)  A change to subheading 8413.11 through 8413.82 from any other heading; or

A change to subheading 8413.11 through 8413.82 from subheading 8413.91 through 8413.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent where the transaction value method is used; or

(b) 50 percent where the net cost method is used.

---

**Bill of Material**

<table>
<thead>
<tr>
<th>Item / Material Description</th>
<th>Part Number</th>
<th>Level</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Value</th>
<th>Country of Origin</th>
<th>Tariff Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Pump</td>
<td>AAA</td>
<td>1</td>
<td>$500.00</td>
<td></td>
<td>$</td>
<td></td>
<td>8413.30.1000</td>
</tr>
<tr>
<td>..Sub-Assy</td>
<td>BBB</td>
<td>2</td>
<td>$250.00</td>
<td>1</td>
<td>$250.00</td>
<td>Canada</td>
<td>8413.91</td>
</tr>
<tr>
<td>...Steel Tube</td>
<td>XYZ</td>
<td>3</td>
<td>$50.00</td>
<td>5</td>
<td>$250.00</td>
<td>Germany</td>
<td>7303.00</td>
</tr>
</tbody>
</table>
USMCA Rules of Origin (cont’d)

DE MINIMIS (UPDATED PROVISION):

- This provision allows finished goods made with non-USMCA-originating materials to qualify.
- The USMCA increased the level of non-originating content considered de minimis from 7% to 10% of value (excluding int’l freight) or cost of good.
- With some exceptions, a good is originating if it contains de minimis quantities of non-originating materials that do not undergo an applicable change in tariff classification.
USMCA Rules of Origin (cont’d)

RECOVERED MATERIALS (NEW PROVISION):

► A “recovered material” qualifies as originating for the purposes of determining whether a “remanufactured good” is originating if it is derived in the territory of one or more USMCA parties and it is used in the production of and incorporated into the remanufactured good.

• “Recovered materials” are parts resulting from the disassembly of used goods that are brought into sound working condition.
“Remanufactured goods” are products entirely or partially composed of recovered materials, having similar life expectancy, and performing the same as or similar to such a good when new.

Sets, Kits, and Composite Goods (New Provision): 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 rules of origin.
USMCA Rules of Origin (cont’d)

USMCA ACCUMULATION (UPDATED PROVISION):

- An originating good or material produced in one Party is considered originating in another Party when it is used as a material in the production of a good there; and

- Processing of a non-originating material in a Party contributes to the originating status of the good, regardless of whether that production was sufficient to confer originating status to the material itself.
USMCA allows the production undertaken on a non-originating material in the territory of one of the parties to contribute toward the originating status of a good regardless of whether that production was sufficient to confer originating status to the material itself.

All non-originating materials used in the production of the goods must undergo the tariff classification change set out in Annex 401 of the Agreement, entirely in the territory of one or more of the NAFTA countries.
USMCA Rules of Origin (cont’d)

**ACCUMULATION - USMCA EXAMPLE:**

- A U.S. producer (B) purchases bearing parts from a U.S. supplier (A) and uses the parts to make finished bearings, then sells the finished bearings to a company in Mexico (C);
- Currently, Producer B does not meet the RVC;
- Supplier A provides a statement to Producer B identifying the value of originating material;
- Producer B’s RVC increases accordingly and the bearings qualify under the specific rule of origin for duty-free USMCA entry into Mexico; and
- Mexico Company C can count the bearings as “originating” in its BOM.
USMCA Rules of Origin (cont’d)

Transit and Transshipment (Updated Provision): USMCA allows an originating good to be shipped through a non-party without losing its status as an originating good -- provided certain conditions are met:

- While in the possession of a non-party, the good may not undergo further operations except unloading, reloading, storing, labeling, and marking required by a USMCA party, or any other operation to preserve the good in good condition; and
- The good must also remain under customs control while in possession of a non-party.*

*A good loses USMCA originating status when it enters the commerce of a country outside the USMCA territory. To avoid this, store a “transshipped” good in a FTZ or customs bonded warehouse of another country before returning it to the USMCA territory.
USMCA Rules of Origin - Automotive Goods

- Increased Regional Value Content ("RVC") requirements:
  - Raised the overall RVC requirement from the current 62.5% to 75% for passenger vehicles and light trucks, phased in over a 5-year period (or 3 years, if "averaging" is used); and
    - Created an automotive parts RVC in 3 new categories: core parts at 75%, principal parts at 70%, and complementary parts at 65%, over a 5-year period.

- Elimination of the tracing list: The NAFTA tracing provision prevented the value of non-originating materials used to produce originating goods from being counted in any RVC calculation. This provision has been eliminated from USMCA.
Steel and Aluminum Content

- In addition to the Rules of Origin, a passenger vehicle, light truck, or heavy truck is originating if 70% or more of the producer’s purchases of steel and aluminum, by value, are originating.

- To qualify for USMCA, a vehicle producer must certify that the above requirement is met.
  - The certification must be submitted to CBP via an online web-portal (not via the Automated Commercial Environment, or “ACE”).
The USMCA CEE will review the steel and aluminum certifications and determine “no error” or “errors found” and the description of those errors / omissions.

1. If “no errors” found, the USMCA CEE will accept the certification and reply to the producer, “Certification accepted.”

2. If “errors found,” the USMCA Center will reply to the producer with a notification that “certification rejected” and a description of the errors or omissions for action. The USMCA Center will inform the producer that further information or documentation is required and additional information is due to CBP in five business days.
INTRODUCTION OF A LABOR VALUE CONTENT (“LVC”) RULE

- This rule requires that a certain percentage of qualifying vehicles must be produced by employees making an average of $16/hour. It is mainly aimed at Mexico.

- First-ever U.S. free trade agreement incorporating labor issues as a core principle.
LVC Calculation
DEFINITIONS

LVC IS THE LABOR VALUE CONTENT, EXPRESSED AS A PERCENTAGE

► HWLC is the high-wage labor costs;
► HWME is the high-wage material and manufacturing expenditures;
► HWT is the credit for high-wage technology expenditures;
► HWA is the credit for high-wage assembly expenditures;
► NC is the net cost of the vehicle; and
► Total APV is the total vehicle plant assembly annual purchase value.
LVC Calculation

FORMULAS

Formula Based on Net Cost:

\[
LVC = \frac{HWLC \text{ (if the producer elects)} + HWME \text{ NC} + HWLC \text{ (if in the numerator)}}{Total \ APV + HWLC \text{ (if in the numerator)}} \times 100 + HWT + HWA
\]

Formula based on Total Vehicle Plant Annual Purchase Value:

\[
LVC = \frac{HWLC \text{ (if the producer elects)} + HWME \text{ Total APV} + HWLC \text{ (if in the numerator)}}{Total \ APV + HWLC \text{ (if in the numerator)}} \times 100 + HWT + HWA
\]
USMCA Certification Procedures
USMCA Certification Procedures

USMCA established procedures that streamline certification and verification of rules of origin.

<table>
<thead>
<tr>
<th></th>
<th>NAFTA</th>
<th>USMCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is any specific Certificate of Origin form required?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Who can certify?</td>
<td>Exporter or producer</td>
<td>Exporter, producer, or importer</td>
</tr>
<tr>
<td>Can the Certificate of Origin be exempted for a shipment under $1,000?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
USMCA Certification Procedures (cont’d)

USMCA established procedures that streamline certification and verification of rules of origin.

<table>
<thead>
<tr>
<th></th>
<th>NAFTA</th>
<th>USMCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the blanket period of 12 months the maximum term for a multi-shipment certificate?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Refund claim window</td>
<td>No later than 1 year after import</td>
<td>1 year or longer as specified by a USMCA member state’s law.</td>
</tr>
</tbody>
</table>
Minimum Data Elements (Annex 5-A to the USMCA)

1. **Importer, Exporter, or Producer Certificate of Origin:** Indicate whether the certifier is the exporter, producer, or importer in accordance with Article 5.2.

2. **Certifier:** Provide the certifier’s name, title, address (including country), telephone number, and email address.

3. **Exporter:** Provide the exporter’s name, address (including country), e-mail address, and telephone number if different from the certifier. This information is not required if the producer is completing the certification of origin and does not know the identity of the exporter. The address of the exporter shall be the place of export of the good in a party’s territory.
Producer: Provide the producer’s name, address (including country), e-mail address, and telephone number, if different from the certifier or exporter or, if there are multiple producers, state “Various” or provide a list of producers. A person that wishes for this information to remain confidential may state “Available upon request by the importing authorities”. The address of a producer shall be the place of production of the good in a party’s territory.

Importer: Provide, if known, the importer’s name, address, e-mail address, and telephone number. The address of the importer shall be in a party’s territory.
**Minimum Data Elements (Annex 5-A to the USMCA) (cont’d)**

**Description and HS Tariff Classification of the Good:**

- Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description should be sufficient to relate it to the good covered by the certification; and

- If the certification of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

**Origin Criteria:** Specify the origin criteria under which the good qualifies, as set out in Article 4.2 (Originating Goods).
Blanket Period: Include the period if the certification covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 5.2 (Claims for Preferential Tariff Treatment).

Authorized Signature and Date: The certification must be signed and dated by the certifier and accompanied by 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.”
Recommendation

**USMCA CERTIFICATION**

- BDO recommends using a standard Certificate of Origin ("CO") form when certifying goods as USMCA-originating.
- An officer of the company should consider signing all certificates to demonstrate understanding of the regulations at the highest level.
- Alternatively, the officer could issue written authorization designating an employee to complete and sign the USMCA CO on behalf of the company.
USMCA vs. NAFTA - Other Changes
# USMCA - Other Changes

<table>
<thead>
<tr>
<th>Sector</th>
<th>USMCA</th>
<th>NAFTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISPUTE SETTLEMENT</td>
<td>▶ Eliminates Investor-State Dispute Settlement (&quot;ISDS&quot;) for Canada; and ▶ Maintains ISDS only between the U.S. and Mexico for claimants meeting certain criteria.</td>
<td>▶ Trilateral commitments — Chapter 11 provides a mechanism for solving disputes between companies and NAFTA governments. Chapter 19 allows for cross-border mediation when NAFTA partners clash over dumping or subsidy cases. Chapter 20 governs disputes between states.</td>
</tr>
<tr>
<td>CURRENCY</td>
<td>▶ Includes new currency provisions, i.e., Article 33.4 of Chapter 33, which commit the three countries to maintain market-determined exchange rates and refrain from competitive devaluations of their currencies.</td>
<td>▶ Does not include any currency provisions.</td>
</tr>
</tbody>
</table>
### USMCA - Other Changes (cont’d)

<table>
<thead>
<tr>
<th>Sector</th>
<th>USMCA</th>
<th>NAFTA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GOVERNMENT PROCUREMENT</strong></td>
<td>▶ Only applies to U.S.-Mexico procurement; and ▶ Canada remains covered by the more recent and comprehensive WTO Government Procurement Agreement (“GPA”) that has higher monetary thresholds.</td>
<td>▶ Trilateral commitments — Chapter 10 requires each of the three countries to accord non-discriminatory, “national” treatment to suppliers of goods and services in the other two countries in public sector procurement that is covered by the Chapter.</td>
</tr>
<tr>
<td><strong>NON-MARKET ECONOMY</strong></td>
<td>▶ Article 32.10 provides the option of locking out non-market economies. It discourages any party from signing FTAs with countries that do not allow open competition or full property rights and therefore cannot trade freely. ▶ From a U.S. policy standpoint, an FTA with China may cause “issues.”</td>
<td>▶ No non-market economy clause exists under NAFTA.</td>
</tr>
</tbody>
</table>
## USMCA - Other Changes (cont’d)

<table>
<thead>
<tr>
<th>Sector</th>
<th>USMCA</th>
<th>NAFTA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DIGITAL TRADE</strong></td>
<td>▶ Prohibits customs duties on electronically-transmitted products and limits on source code disclosure requirements; and</td>
<td>▶ Does not contain any digital trade provisions</td>
</tr>
<tr>
<td></td>
<td>▶ Contains broad provisions on cross-border data flows and restrictions on data localization requirements.</td>
<td></td>
</tr>
<tr>
<td><strong>STATE-OWNED ENTERPRISES</strong></td>
<td>▶ Requires SOEs to adhere to market forces.</td>
<td>▶ Does not have any SOEs provisions.</td>
</tr>
<tr>
<td>(“SOES”)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SUNSET CLAUSE</strong></td>
<td>▶ Has a sunset clause requiring a joint review and agreement on renewal at year 6; in lieu of mutual agreement at the time, USMCA would expire 16 years later.</td>
<td>▶ Does not have an automatic sunset clause.</td>
</tr>
</tbody>
</table>
USMCA - Other Changes (cont’d)

<table>
<thead>
<tr>
<th>Sector</th>
<th>USMCA</th>
<th>NAFTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTELLECTUAL PROPERTY RIGHTS (&quot;IPR&quot;)</td>
<td>► Retains NAFTA’s core protections for copyrights and patents;</td>
<td>► Includes provisions on biologic data protection; and</td>
</tr>
<tr>
<td></td>
<td>► Removes provisions on biologic data protection; and</td>
<td>► Includes copyright term up to 50 years.</td>
</tr>
<tr>
<td></td>
<td>► Includes copyright term extended to 70 years.</td>
<td></td>
</tr>
</tbody>
</table>
Duty Reduction & Refund Strategies

- Other Free Trade Agreements
  - Canada and Mexico are party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") and the U.S is not.
    - CPTPP tends to have lower RVC requirements than USMCA.

- Duty Drawback
  - Same condition
  - Manufactured goods
    - USMCA limitation “lesser of” concept applies

- Strategic Sourcing and Shipping
Thank You
DAMON V. PIKE

Principal, International Tax - Customs and International Trade Services

EXPERIENCE

Damon Pike leads the Customs and International Trade Services group within BDO’s International Tax Services practice with over 30 years of experience helping multinational companies navigate the complex rules governing the cross-border movement of goods and services.

Prior to launching his own firm in 2006, Damon spent 12 years with a Big Four firm as the National Director of the firm’s customs consulting practice. Pike has experience in the legislative and judicial branches of the federal government; he began his career as a law clerk to the Hon. R. Kenton Musgrave at the U.S. Court of International Trade and was an associate in the Washington, D.C. office of the Atlanta-based law firm of Kilpatrick & Cody (now Kilpatrick Townsend).

SKILLS AND ACADEMIC EXCELLENCE

Mr. Pike is renowned for his insights in harmonizing transfer pricing policies and customs valuation requirements as part of designing in-house customs and trade compliance programs. He is an adjunct professor at Emory University School of Law, where he teaches “Customs Law” based on the book he co-authored of the same name, the only U.S. law school casebook ever published in this field.

PROFESSIONAL AFFILIATIONS

- Admitted to the Bars of North Carolina and the District of Columbia
- Admitted to the Bars of the U.S. Court of International Trade, U.S. Court of Appeals for the Federal Circuit, and the U.S. Supreme Court
- Customs and International Trade Bar Association
- Chair of the Customs Law Committee of the International Law Section of the American Bar Association, 2011-2013
- District Export Council, State of Georgia, 2015-2019 (U.S. Department of Commerce)
- Exporters’ Textile Advisory Committee, 1997-2006 (U.S. Department of Commerce)
- Georgetown University Law Center International Trade Update, Advisory Board, 2005-2015
- Licensed U.S. Customhouse Broker

EDUCATION

- Law Degree, Wake Forest University
- Postgraduate Fellowship (German Academic Exchange Service), University of Regensburg (Germany)
- Undergraduate with Honors, Duke University
- International Business, University of Copenhagen (Denmark)
- International Trade, Friedrich-Alexander University (Germany)
Biography

TRAVIS FOURNIER
Manager, International Tax - Customs and International Trade Services

EXPERIENCE
Travis is a manager in BDO’s Customs and International Trade Services practice within BDO’s International Tax Services group. He has over 7 years of experience providing major US and international clients with trade compliance, customs valuation and audit, and free trade services.

Prior to joining BDO, Travis was a manager of value reconciliation and free trade services at Expeditors Tradewin, LLC - the compliance arm of a Fortune 500 logistics company. In previous roles he has also advised clients with Customs classification and country of origin determinations.

Travis has served a wide range of clients across all industries including automotive, electronics, oil and gas, and pharmaceuticals. Travis has helped clients save millions of dollars by helping them understand and apply complex duty optimization programs to their imported products.

PROFESSIONAL AFFILIATIONS
Licensed US Customhouse Broker

EDUCATION
B.A., Wayne State University

Direct: 248-244-6526
Mobile: 586-945-0237
tfournier@bdo.com

2600 W. Big Beaver Road, Suite 600
Troy, MI 48084