

IMPORTING UNDER THE USMCA: STRATEGIES FOR USING THE USMCA TO GAIN A COMPETITIVE EDGE

*PREPARED FOR
THE WORLD TRADE CENTER DELAWARE*

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US-Mexico-Canada Agreement (USMCA)

- An updated version of the more than 25-year-old North American Free Trade Agreement (NAFTA).
- Goes into effect on July 1, 2020.

USMCA: Key Differences & Improvements

- Retains most of NAFTA's chapters.
- Makes changes to:
 - Market access for autos and agricultural products;
 - Investment, government procurement and IPR; and
 - Labor and the environment.
- New provisions for digital trade, state-owned enterprises and currency misalignment.

USMCA: Significant New Provisions



- Formal Certificate of Origin not required.
- De Minimis Rule for non-originating inputs raised from 7% to 10%.
- Sunset clause: Joint review/agreement at Year 6, in lieu of mutual agreement at the time, would expire 16 years later or 2042.
- A Party may withdraw if another enters a FTA with a nonmarket economy country (e.g., China).

Determining Product Eligibility Under USMCA

Eligible goods must meet the Rules of Origin. They must be:

- a) Wholly obtained or produced entirely in the USMCA territory;
- b) Produced entirely in the USMCA territory using materials that are originating and non-originating, if the finished good satisfies all specific rules of origin;
 - Which usually means that the non-originating material has been substantially transformed into a new and different article of commerce.
- c) Is produced entirely in the territory of one or more of the Parties exclusively from originating materials; ...

Determining Product Eligibility Under USMCA *(Continued)*

SETS: Goods put up in sets for retail sale, including textile and apparel sets, will originate only if—

- Each item in the set is originating and the set meets all other applicable requirements OR
- The total value of the non-originating items in the set does not exceed 10% of the value of the set and all other originating requirements are met.

Making Claims Under the USMCA

- There will be a special column in the HTSUS for the Special Program Indicator (SPI) for items eligible for preferential treatment under the USMCA—that SPI will be “S”.
- Qualifying goods are exempt from the Merchandise Processing Fee (MPF) when USMCA is claimed at the time of entry.

Post-Importation Claims

- If a claim was not made at the time of entry, importers may make a post-importation claim within one (1) year of importation.
- MPF fees paid on entry will not be refunded as part of a post-importation USMCA claim.

USMCA Certifications

- Certification required, but no formal Certificate of Origin form.
- Certification must contain the following minimum data elements:
 1. Whether it is an importer, exporter or producer's certification;
 2. Name, title, address, phone, and email address of the certifier;
 3. The particulars of the producer, unless he is the certifier;
 4. The contact information of the importer.
 5. Description and HTSUS to the 6-digit level.
 6. Origin criteria under which the good qualifies.

USMCA Certifications *(continued)*

7. If a Blanket Certification, include the period covered (up to 12 months)
8. Signature of certifier, 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.”

Certifications must be in the possession of the importer at the time of making a claim for preferential treatment under USMCA.



Recordkeeping Requirements

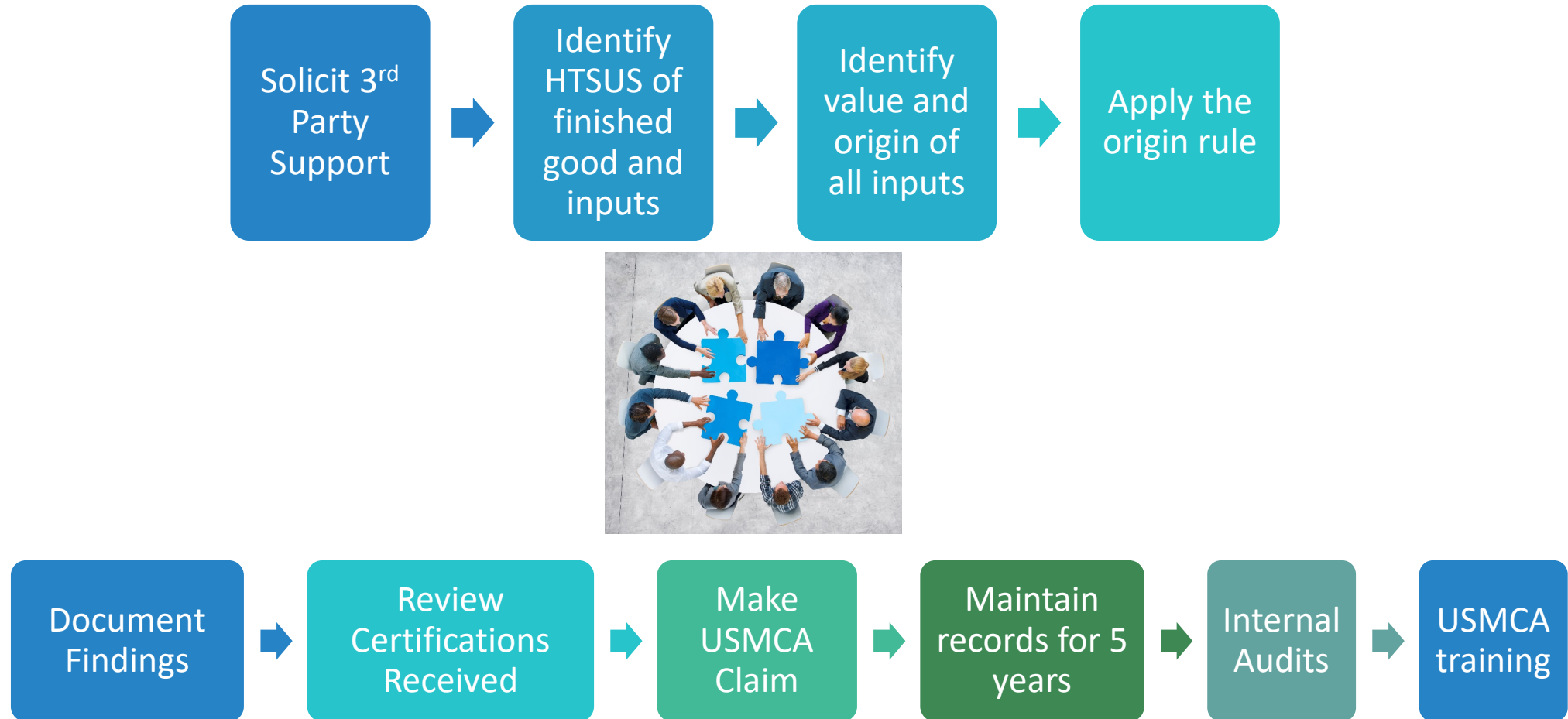
- All records must be maintained by the importer for five (5) years from the date of entry.
- Any person who issues a certification must retain all supporting documentation for five (5) years from the date of entry.
- An importer and/or a certifier must render the supporting documentation to Customs and Border Protection upon request.



Successful Use of USMCA Requires Established Procedures

- Annual vendor/manufacturer solicitation process;
- Internal qualification process—
 - Tariff classification of the finished product
 - BoM showing HTSUS, values and origins of inputs
 - Identification of applicable rule of origin
 - Determination and Documentation;
- Review of USMCA certifications received;
- Record retention;
- Internal auditing of claims made; and,
- USMCA Compliance Training for responsible personnel.

Suggested Processes for USMCA Compliance





Consequences of Non-Compliance

- ❑ Payment of duties that would have been otherwise assessed with interest from the date of entry.
- ❑ Penalties for submitting a false preference claim, such as:
 - ❑ Negligence – lesser of 2x the duties or domestic value;
 - ❑ Gross negligence – lesser of 4x the duties or domestic value;
 - ❑ Fraud – domestic value.

Thank You!



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