



FedEx Regulatory Alerts & Updates

Regulatory Alert: U.S. Import Details for USMCA

June 9, 2020

Background

The United States-Mexico-Canada Agreement (USMCA) is replacing the North American Free Trade Agreement (NAFTA) after nearly 27 years. The USMCA will enter into force on July 1, 2020.

Shipments that qualify for a NAFTA duty preference that are imported into the U.S. in any mode that are entered on or before June 30, 2020 will have the NAFTA rules applied.

In order to implement USMCA, U.S. Customs and Border Protection (CBP) will promulgate new regulations, to be codified in a new part of Title 19, Code of Federal Regulations, to include the USMCA Uniform Regulations and the USMCA U.S. Domestic Regulations. In addition, the U.S. International Trade Commission will amend the Harmonized Tariff Schedule of the United States (HTSUS) to include a General Note (GN) with information on the USMCA rules of origin.

Details of Import Clearance Requirements for FedEx Express Shipments to the U.S.

The U.S. importer may make a claim for preferential tariff treatment by providing the USMCA Certification of Origin (COO) data elements. Unlike NAFTA, there is not a specific government-issued form or format required to certify origin. Instead, the certification must contain a set of nine data elements and must be provided by the exporter, producer or importer for the purpose of certifying that a good qualifies as an originating good. In addition, the imported goods must originate and be exported from a USMCA country. The certification can be prepared to cover a single shipment or for a 'blanket' period to cover multiple shipments of identical goods for up to one year. It may be prepared in Spanish, French or English. However, CBP could require a COO in French or Spanish to be translated to English. The COO needs not be in a specific form or format as long as it includes the nine required data elements. Although the USMCA certification of origin may be signed by the exporter, producer or importer, it is incumbent upon the importer making the claim to have the certification at the time of entry.

The matrix below lists the FEX import requirements for USMCA shipments, sorted by value, entry type, required documentation, and additional details, based on the information available at the date of this posting.

Value (USD)	Entry Type	Documentation Required	Additional Details
1 - 800	"Section 321" or De Minimis (\$800 or less is the U.S. De Minimis threshold)	No USMCA low-value statement (see below) or COO required	At this time, goods subject to Participating Government Agency (PGA) regulations cannot be de minimis or Section 321 clearance.
801 - 2500	Informal entry	Either 1) USMCA low-value statement certifying origin on the commercial invoice (CI) by exporter or producer, or 2) The nine COO data elements (see below) on the documentation or from the exporter or producer	Goods subject to PGA regulations will require a single informal entry.
Over 2500	Formal entry	The nine COO data elements (see below) on the documentation or from the exporter or producer	Formal entry also includes shipments in the lower value ranges that do not qualify as informal entry such as goods subject to AD/CVD or quotas.

The USMCA low-value statement is as follows: *"I hereby certify that the goods covered by this shipment qualify as an originating good for the purposes of preferential tariff treatment under USMCA/CUSMA/T-MEC."* This statement can be included on the commercial invoice or as a separate document with the shipment.

The USMCA Certification of Origin should contain the nine minimum data elements set out in the USMCA's Annex 5-A (Minimum Data Elements). The data elements must indicate that the good claiming preferential treatment originates and meets the requirements of USMCA Chapter 5. This information may be provided on an invoice or any other document. The information must describe the originating good in sufficient detail to enable its identification and meet the requirements as set out in the USMCA Uniform Regulations. FedEx will also provide a USMCA Certification of Origin template that can be used to claim USMCA preferential benefits.

The nine data elements required for the certification of origin for USMCA are:

1. Importer, Exporter, or Producer Certification of Origin

Indicate whether the certifier is the exporter, producer, or importer in accordance with Article 5.2 (Claims for Preferential Tariff Treatment).

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.

4. 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.

5. 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.

6. Description and HS Tariff Classification of the Good

- a. 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 5-A-2.
- b. If the certification of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

7. Origin Criteria

Specify the origin criteria under which the good qualifies, as set out in Article 4.2 (Originating Goods).

8. 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).

9. 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.

Q & A

Q1. With the USMCA effective date being on a Wednesday, will CBP accept a NAFTA COO for a few days after July 1 to allow the trade to adjust to the new USMCA requirements?

A1. NAFTA rules will remain in effect until the USMCA enters into force on July 1. CBP will not accept the NAFTA COO after June 30.

The core information required by USMCA is similar to the NAFTA COO (i.e., CBP Form 434) and contains many of the same data elements; however, the USMCA is a new and unique trade agreement. The rules of origin for some products may be the same under both trade agreements; however, that is not always so, especially for automotive goods. The underlying data from a NAFTA COO may be used to make a USMCA certification of origin so long as the rules of origin for that particular merchandise has not changed and the underlying data remains accurate.

To be clear, CBP will not accept the actual NAFTA COO after June 30. We note that for certain products such as automotive goods the rules of origin for USMCA are quite different from NAFTA. Consequently, the certifying party should pay particular attention to such shipments and review their products to verify that they qualify as originating under the USMCA rules.

Q2. What other reasons might a shipment valued \$800 or less not be cleared as de minimis other than the PGA regulatory requirements?

A2. De minimis or Section 321 entry into the U.S. is NOT allowed for tariff rate items, articles subject to AD/CVD, goods subject to an absolute quota, more than \$800 of goods imported by one person in one day, or goods sent in separate lots covered by a single order or contract sent separately for the express purpose of securing Section 321 entry or of avoiding compliance with any pertinent law or regulation.

Customers should note that CBP can require a formal entry on any U.S. import shipment regardless of value.

Q3. What is the specific USMCA low-value statement for eligible shipments valued under \$2,500?

A3. This statement can be included on the commercial invoice or as a separate document with the shipment: "I hereby certify that the goods covered by this shipment qualify as an originating good for the purposes of preferential tariff treatment under USMCA/CUSMA/T-MEC".

Q4. Is the Merchandise Processing Fee (MPF) excluded for USMCA import shipments into the U.S.?

A4. As with NAFTA, the USMCA provides that originating goods and tariff preference level (TPL) goods are exempt from MPF. However, under current law, MPF is excluded only if the claim for preferential tariff treatment is made at the time of entry.

Although unconditionally free goods will not list the SPI in the Special column of the HTSUS, in order to receive an exemption from MPF, a claim for USMCA preferential tariff treatment must be made by using the SPI "S" or "S+", and these claims are subject to the same certification and verification requirements as dutiable goods.

MPF paid on entries, for which a post-importation claims for preference (e.g., reconciliation entries) under the USMCA is made, will not be refunded.

Q5. Is there a timeframe for the CBP regulations to be finalized for USMCA?

A5. The final Uniform Regulations are currently under development. This includes the General Note (GN) details. CBP did publish their interim implementing instructions in April. We have no certain dates when all U.S. regulations will be published at this time.

Q6. Will Special Program Indicators (SPIs) "CA" or "MX" be accepted on or after the July 1 implementation date?

A6. No. Only the SPIs "S" or "S+" will be accepted by CBP after the USMCA is implemented.

Q7. Are there any other names for the USMCA agreement?

A7. Yes, each of the countries involved has a specific name for this new trade agreement. In Canada, this agreement is referred to as the Canada – United States – Mexico Agreement (CUSMA), and in Mexico, this agreement is referred to as *Tratado entre México, Estados Unidos y Canadá* (T-MEC). All three names refer to the same trade agreement.

Q8. Are there any changes to enforcement provisions in the USMCA?

A8. Yes, there are stronger guidelines and enforcement tools to address AD/CVD evasion, hold and inspect transshipped goods that could be in violation of intellectual property rights (IPR), prohibitions on the importation of goods made by forced labor, and requirements to prevent illegal taking of wild flora and fauna (including timber).

Q9. Will there be an informed compliance period for the USMCA?

A9. Customs in all three countries are discussing this possibility. There has not been a final decision as of this alert's posting date. If the final decision is yes, it will be communicated in the future. CBP has indicated that USMCA enforcement would be "light" during the first six months of the agreement.

REFERENCES:

FedEx USMCA site

www.fedex.com/en-us/trade.html

CBP USCMA Landing Page

www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA

CBP Interim Implementing Instructions

www.cbp.gov/sites/default/files/assets/documents/2020-Apr/Implementation%20Instructions.pdf