



**The U.S.–Mexico–Canada Agreement:
A Brief Guide for NEMA/MITA Members**

Version 1.0, April 2020



Introduction and Executive Summary

The U.S. Mexico Canada Agreement (USMCA)¹ was negotiated at the behest of the U.S. to modernize and rebalance the terms of the North American Free Trade Agreement (NAFTA). Under the theme of modernization, USMCA includes new rules for digital trade, customs, and regulatory practices, and currency manipulation as well as provisions to support trade engagement of small and medium-sized enterprises (SMEs). The Administration sought to rebalance trading relationships in North America through alteration of NAFTA provisions on investment protection, government procurement, and rules of origin for key manufacturing sectors, especially automobiles.

In the late stage of the USMCA negotiations, authorities reached compromises on new provisions in labor and environmental protections and enforcement. The addition of these provisions prompted support from some groups who regularly oppose U.S. trade agreements, which facilitated overwhelming bipartisan support for USMCA in Congress.

On April 24, 2020, the Administration notified Congress that USMCA would take effect on July 1, 2020. Although much of NAFTA has been carried over into USMCA, several changes merit attention from NEMA Members. This guide makes the first attempt to provide a quick survey of these changes and their significance and benefits (or costs) for electroindustry and medical imaging manufacturers.

¹ USMCA is known in Canada as CUSMA (the Canada U.S. Mexico Agreement) and in Mexico as T-MEC (Treaty – Mexico Estados Unidos Canada). The full English language text of USMCA is available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>

Investment Disputes

Chapter 14

In contrast to NAFTA, under USMCA, the legal right to sue a government of a Party for a redress of damages from regulatory action or expropriation is severely reduced.

- For U.S.-Canada investments, the so-called investor-state dispute settlement (ISDS) does not exist under USMCA
- For Mexico, access to an investment-dispute-settlement, which is conducted through arbitration, is limited to transactions involving government contracts and or where a breach of national treatment, breach of most-favored-nation treatment, or direct expropriation, is alleged
 - If the investment does not involve a government contract, the investor must take his complaint to local courts and exhaust his options before invoking the USMCA dispute settlement
 - Government contractors in the “oil and gas, power generation, telecommunication, transportation, and infrastructure sectors” may use ISDS immediately for a breach of any provision of the agreement and are not required to use local courts
- U.S. investors that invested in Mexico before the termination of NAFTA will retain access to NAFTA investment protections for three years following the simultaneous entry into force of USMCA and termination of NAFTA

Outside experts encourage U.S. companies with material investments in Mexico to review their situation and the status of investment protections.²

² “US companies with material investments in Mexico should review their situation to see where they stand in light of the above, and, if they have concerns about potential adverse Mexican governmental actions, consider the possibility of implementing a different corporate structure that could afford them a higher level of protection.” <https://www.bakermckenzie.com/en/insight/publications/2020/02/usmca-access-international-arbitration>. See also CRS Report “USMCA: Investment Provisions” at <https://crsreports.congress.gov/product/pdf/IF/IF11167>



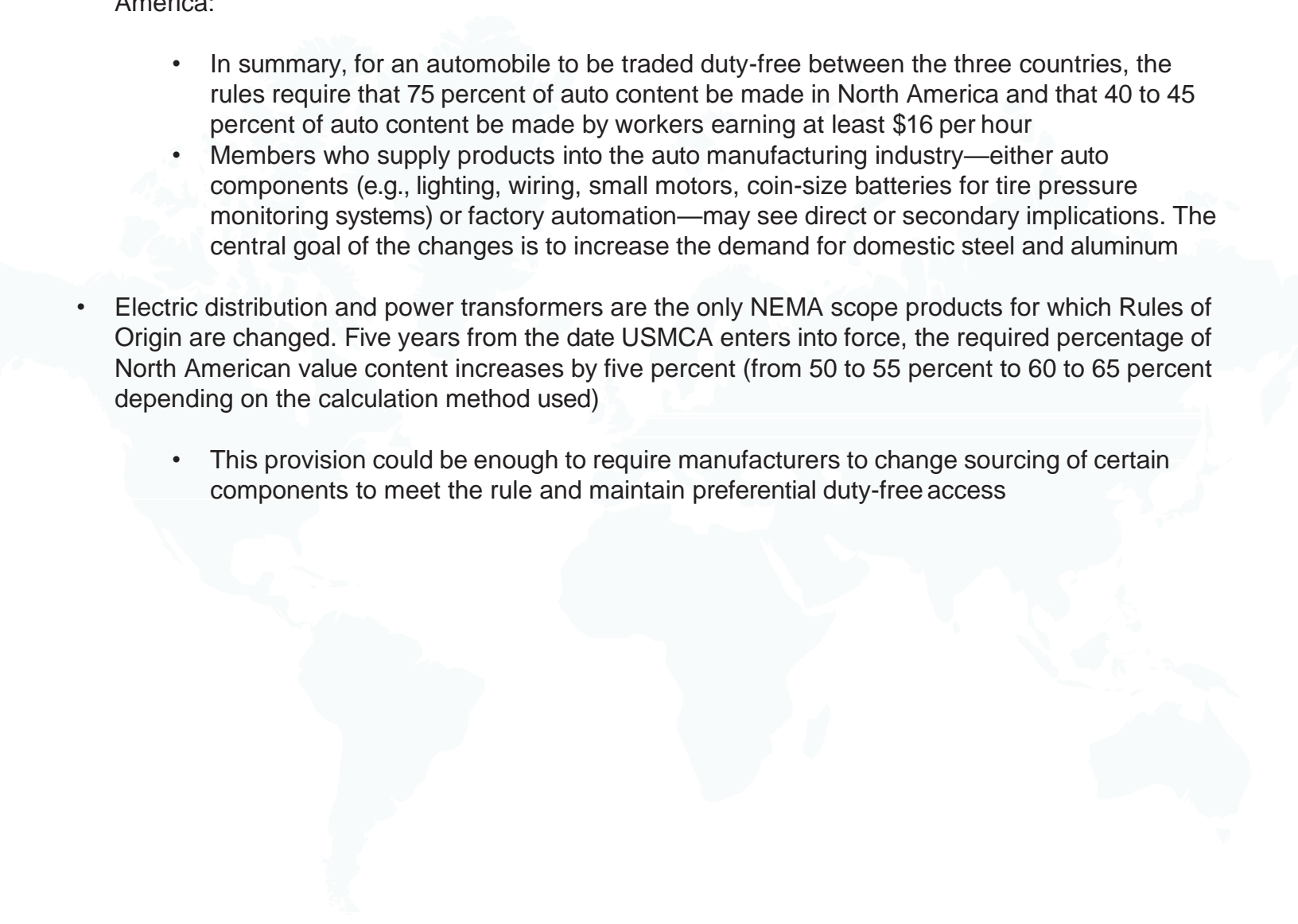
Market Access and Rules of Origin

Chapters 2 and 4

Remanufacturing

- In Article 2.12, the Parties agree:
 - Not to discriminate against imports of re-manufactured goods while allowing that each Party may require re-manufactured goods to be identified as re-manufactured goods and to meet all technical requirements that apply to new goods
 - To exempt re-manufactured goods from any restrictions on trade in used goods

Rules of Origin

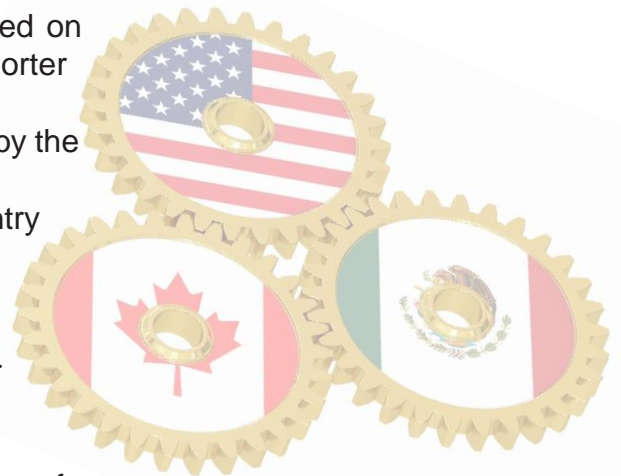
- Most significant are changes to the Rules of Origin for automobiles manufactured in North America:
 - In summary, for an automobile to be traded duty-free between the three countries, the rules require that 75 percent of auto content be made in North America and that 40 to 45 percent of auto content be made by workers earning at least \$16 per hour
 - Members who supply products into the auto manufacturing industry—either auto components (e.g., lighting, wiring, small motors, coin-size batteries for tire pressure monitoring systems) or factory automation—may see direct or secondary implications. The central goal of the changes is to increase the demand for domestic steel and aluminum
 - Electric distribution and power transformers are the only NEMA scope products for which Rules of Origin are changed. Five years from the date USMCA enters into force, the required percentage of North American value content increases by five percent (from 50 to 55 percent to 60 to 65 percent depending on the calculation method used)
 - This provision could be enough to require manufacturers to change sourcing of certain components to meet the rule and maintain preferential duty-free access
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Origin Procedures

Chapter 5

These provisions potentially reduce administrative burdens by eliminating the need for a separate certificate of origin and promoting the use of digital documentation.

- An importer may claim preferential tariff treatment based on certification completed by the exporter, producer, or importer
 - NAFTA requires that the certification be made by the exporter of the good
 - Mexico has three years and six months after entry into force before it must allow acceptance of a certification by the importer
- Use of the NAFTA certificate of origin form³ is no longer required
- USMCA requires each Party to provide that a certification of origin:
 - “Need not follow a prescribed format”
 - Must contain minimum data elements⁴
 - “May be provided on an invoice or any other document” (as long as that invoice or document was issued in one of the Parties)
 - Describes the good in enough detail to enable identification, and
 - Meets requirements set out in the Uniform Regulations⁵
 - May be completed and submitted electronically with an electronic or digital signature



³ Also known as CBP Form 434.

⁴ As detailed in Annex 5-A, the minimum data elements are: whether certifier is the importer, exporter or producer; name, address, and contact information of the certifier, exporter, producer, and importer (if known); description and Harmonized System classification, origin criteria, period of application (if covering multiple shipments); authorized signature; and date.

⁵ As of April 6, the Uniform Regulations had not been published. According to Article 5.16, the Uniform Regulations need be adopted only by the time of the Agreement's entry into force.

Customs Administration and Trade Facilitation

Chapter 7



USMCA requires each Party to:

- Publish online, public and free documentation on how to trade goods within the USMCA area
- Allow self-filing of customs declaration and documentation, removing the requirement in Mexico that a customs broker be used
- Have a single window for customs administration and electronic submission of any data or documentation
- Cooperate and coordinate as appropriate to facilitate the timely clearance of goods through the promotion of efficient and effective processing of imports and exports, including through simultaneous joint inspections
- Take appropriate measures to enhance coordination with other Parties on customs enforcement of laws, regulations, and procedures, including by secure sharing of confidential data and information related to the targeting of unlawful activities



Labor

Chapters 23

The Agreement

- Requires that no Party “shall fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties”
- Requires each Party to promote compliance with its labor laws actively
- Prohibits a Party’s authorities from taking labor law enforcement actions in another Party
- Requires each Party to adequately address “violence or threats of violence against workers” exercising fundamental labor rights including but not limited to freedom of association and collective bargaining
- Guarantees secret ballot votes on collective bargaining agreements

Environment

Chapters 24

- Requires the Parties to effectively enforce their environmental laws
- Includes commitment not to weaken environmental laws to encourage trade or investment
- Provisions are fully enforceable by a dispute settlement

Technical Barriers to Trade

Chapter 11

- The Mexican Senate is considering draft legislation to reform the country’s development of voluntary Standards, the development and enforcement of mandatory regulatory Standards, and its conformity assessment system
- Final provisions and implementing regulations for the “Law on Quality Infrastructure,” intended to replace the “Law on Normalization and Metrology,” will determine whether Mexico complies with the TBT Chapter

Mandatory Product Regulations for Energy Conservation

Chapter 12

The Parties:

- Shall cooperate on energy performance Standards and related test procedures
- “Shall endeavor to harmonize” energy performance Standards (within nine years) and test procedures (within eight years) that all three Parties apply to products as of the date of entry into force of the Agreement
- “Give due consideration to” adopting measures adopted by another Party or Standards developed by an accredited organization and published in another Party
- Agree that voluntary energy efficiency programs (e.g., ENERGY STAR) should be made more compatible and avoid the creation of unnecessary barriers to trade

Medical Devices

Chapter 12

The Parties are required to:

- Publish online a detailed description and contact information for their central authority for regulation in this area
- Avoid adopting or maintaining unnecessarily duplicative regulatory requirements
- Define “medical devices” in a way consistent with global best practices
- Seek to collaborate, including through the regional initiatives and the International Medical Device Regulators Forum, to improve the alignment of their respective regulations and regulatory activities



Digital Trade

Chapter 19

The entire Digital Trade chapter is new to USMCA⁶.
Key details and benefits:



- Prohibits application of customs duties and other discriminatory measures to digital products distributed electronically, such as videos and software
- Ensures that data can be transferred across borders
- Facilitates digital transactions by permitting the use of electronic authentication and signatures while protecting confidential content
- Prohibits data localization mandates used to restrict where data can be stored and processed
- Promotes collaboration in addressing cybersecurity challenges.
- Protects against forced disclosure of proprietary computer source code and algorithms.

Government Procurement

Chapter 15

- Sales from Canada to U.S. government agencies and sales from the U.S. to Canadian government entities will no longer be covered by a regional preferential trade agreement. U.S.-Canada government procurement terms will now be covered by the Government Procurement Agreement of the World Trade Organization. This could result in a material reduction in NEMA Members' competitiveness selling from the U.S. to Canadian federal government entities as well as provincial entities, including electric utilities.
- U.S.-Mexico government procurement market access remains the same as under NAFTA.

⁶ The USTR fact sheet is available here: https://ustr.gov/sites/default/files/files/Press/fs/USMCA/USMCA-Digital_Trade.pdf

Good Regulatory Practices

Chapter 28

The Parties are required to:

- Promote government-wide adherence to good regulatory practices
- Under normal circumstances, provide transparency into the development of regulations, including through publication of an annual regulatory agenda and issuance of guidance on the quality of information to be used by the regulator
- Conduct retrospective reviews of regulations
- Provide an opportunity for “any interested person to submit...written suggestions for the issuance, modification, or repeal of a regulation”

Each Party is encouraged to:

- Conduct regulatory impact assessments
- Use balanced expert groups as a complement to public comments
- Support regulatory compatibility and cooperation



Small and Medium-Sized Enterprises

Chapter 25

The Parties must:

- Promote information sharing and collaboration among their respective agencies that support small businesses
- Maintain a website with the text of the agreement and information designed to inform SMEs about the terms of the agreement and promote beneficial access of SMEs to opportunities provided by the agreement

The Parties are to convene an annual Trilateral SME Dialogue to facilitate the sharing of views and information by SMEs with the governments.



General Provisions

Chapter 32

Article 32.10 specifies that a Party entering into free trade agreement negotiations with a non-market economy country (e.g., China) must:

- Provide the other Parties three months prior notice
- Provide information about its negotiating objectives
- Provide access for the Parties to review the text of the agreement before signature to permit assessment by the Parties of potential impacts on USMCA

Entry by a Party into a free trade agreement with a non-market economy is cause for the other Parties to terminate USMCA with six months' notice and transition to a bilateral agreement that excludes the first Party.

Transition, Review, and Extension Provisions

Chapter 34

As with NAFTA, any Party may withdraw from the agreement six months after providing written notice of its intent to do so. Unlike NAFTA,

- USMCA has an end date—16 years after it enters into force unless all three Parties confirm they wish to continue the agreement for another 16 years
- A joint review of the agreement will begin on the sixth anniversary of the agreement's entry into force
 - As part of the joint review, the Parties may agree to extend the term for another 16 years. However, if one or two Parties disagree, the term will not be extended at that time, and joint reviews will thereafter take place on an annual basis

