

# U.S. — Mexico — Canada Trade Agreement (USMCA)

## ACA Guidance on USMCA Rules of Origin



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# USMCA

UNITED STATES-MEXICO-CANADA AGREEMENT

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The **American Coatings Association** is the premier trade association for manufacturers of paints and coatings and their raw material suppliers. The growing industry consists of a broad array of establishments, from manufacturing and chemical supply facilities to hardware stores and name-brand retailers. The U.S. paint and coatings industry ships an estimated \$28.4 billion in paint and coatings products annually.

Canada and Mexico are the biggest trading partners for the U.S coatings industry. Every year, approximately \$1.5 billion dollars in goods are shipped throughout the North American supply chain in the coatings industry. These goods include coatings for the automotive industry, as well as other coating products and raw materials. Whether these goods are able to move across borders with preferential tariff treatment depends on the existence of trading agreements between the countries.

The United States – Mexico – Canada Trade Agreement (USMCA) is a regional trade agreement that eliminates barriers in trade and facilitates cross-border movement of goods and services between these three parties. USMCA officially went into force on July 1, 2020, replacing the previous trade agreement, the North American Free Trade Agreement (NAFTA).

Like its predecessor NAFTA, the USMCA permits duty-free trade only for products that “originate” within the territory of the signatory countries. The agreement’s product-specific rules of origin must be applied to determine whether goods, including paint and coating products, meet the requirements for originating status. Proper understanding of these rules is crucial to obtaining duty-free treatment for products shipped between North American countries, and documenting claims to such treatment.

This Guide focusses specifically on applying the Rules of Origin. It includes examples and explanations for how to apply these rules while engaging in cross-border trade.



*This document only provides guidance regarding USMCA’s rules of origin and certification requirements, and it should not be taken as product-specific advice. Before carrying out any transaction, a product-specific analysis should be done to prevent non-compliance.*

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## I. General Definitions

**Agreement** means the USMCA trade agreement.

**Annex 4-B** means the portion of the USMCA that details specific rules of origin for individual products.

**Certifier** means the importer, exporter, or producer acting in as the party endorsing that the goods are originating under the Agreement and therefore deserve preferential treatment.

**Chapter** means the section of the HS or HTSUS that corresponds to a particular good.

**Exporter** means a natural person or an enterprise that sells and sends goods to another country.

**Harmonized System (HS)** means the hierarchical structured nomenclature, promulgated by the World Customs System, for describing goods in international trade

**Harmonized Tariff Schedule of the United States (HTSUS)** means the United States' hierarchical structured document describing all goods in trade, subsequent duties, and related information.

**HS Code** means the universal 6-digit code used to classify goods globally – this is the code level required by the USMCA origin certification. [####.##].

**HTSUS Code** means the full, U.S.-specific tariff code containing the 6-digit HS Code and an additional 4 digits for U.S.-specific categorization – while this code is used for imports, the 10-digit level is not required for the USMCA origin certificate [####.##.####]

**Importer** means a natural person or an enterprise that brings goods or services into a country.

**Notes** means the binding classification principles and requirements specific to each Section and Chapter.

**Originating** means a good that satisfies criteria as laid out in the Agreement to be classified as a product of either the United States, Mexico, or Canada.

**Preferential Treatment** means the advantageous tariff/duty treatment a good receives because of its origin and the Agreement.

**Producer** means a natural person or an enterprise that engages in the production of a good, including the processing, manufacturing, or assembling of a good.

**Rules of Origin** means the required criteria under USMCA for a good to receive preferential treatment

**Tariff Shift/Change in Tariff Classification** means the combining of multiple materials classified under different HS Codes and creating a new finished product that is classified under a new HS Code. *i.e. combining bulk maple wood and varnish to create a kitchen table*

## II. USMCA and the Harmonized System (HS)

The USMCA provides for duty-free trade between signatory countries of goods that would normally be subject to import duties, so long as the goods meet the USMCA's rules of origin. Compliance with these rules means that the goods will be considered "originating" in the territory of the three signatory countries.

The USMCA permits goods that incorporate materials or components made in non-signatory countries to be deemed "originating" – at least in certain instances. To determine whether any individual good containing non-originating materials is "originating," it will generally be necessary to identify the product-specific rule of origin for the good in the Agreement text. These product-specific rules are based on the classification of individual products under the Harmonized System (HS).

The HS is a nomenclature system, promulgated by the World Customs Organization, that utilizes a hierarchical structure to describe and classify traded goods based on their composition, function, and/or name. The HS is divided into 21 Sections. These Sections are further divided into 97 Chapters, each of which is assigned a 2-digit code. Each Chapter contains multiple 4-digit headings, which are subdivided into 6-digit "subheadings."

**32 04 15**  
Chapter Heading Subheading

For example, in the illustration above, the 32 indicates Chapter 32, covering dyes, paints, pigments, and varnishes; the 04 indicates heading 3204, covering synthetic organic coloring matter/preparations and brightening agents, and the 15 refers to subheading 3204.15, which covers products of heading 3204 that take the form of vat dyes and preparations based on vat dyes.

All three USMCA signatory countries use the HS as the basis for their individual tariff schedules. Each country's tariff schedule includes the 21 Sections and 97 Chapters that make up the HS, as well as the same 4-digit headings and 6-digit subheadings in each Chapter. Beyond this level, each country breaks out its classifications to more specifically identify products for duty and statistical purposes. For example, the Harmonized Tariff Schedule of the United States (HTSUS) employs 10-digit tariff classifications, in which the 8-digit codes are known as "tariff lines," and the full 10-digit codes include, at digits 9-10, are the "statistical breakout." Below is an example of a full, 10-digit U.S. classification under HS subheading 3204.15:

**32 04 15 35 00**  
Chapter Heading Subheading Tariff Line Statistical Breakout

The full 10-digit provision is fully identical to the HS through the 6-digit level. Beyond that, digits 7-10 identify "Solubilized vat orange 3; Vat blue 2; Vat red 44; and Vat yellow 4, 20," within the universe of vat dyes/preparations covered by 6-digit HS provision 3204.15.

While it is important to properly identify the full, country-specific tariff classification for purposes of customs clearance, to apply the USMCA rules of origin it will normally be sufficient to identify the 6-digit HS subheading. Moreover, while the USMCA requires HS classification at the 6-digit level to be included on certificates of origin, it does not require these certificates to identify any additional, country-specific breakouts of the 6-digit HS codes.

The HTSUS, which can be consulted to identify relevant 6-digit HS subheadings for USMCA purposes, is periodically updated and is located [HERE](#).

The HTSUS currently contains 22 Sections and 99 chapters – the HS’s 21 Sections and 97 Chapters, plus an additional 22nd Section containing two Chapters relating to U.S.-specific specialty classifications and temporary tariff modifications.<sup>1</sup> Each Section and Chapter within the HTSUS provides a broad explanatory title to guide classification, and contains notes that specify what is and what is not covered within each Section and Chapter. Because the guide is hierarchical, goods within each Chapter are placed under headings and subsequent subheadings, and then further divided into statistical provisions. The HTSUS provides, relevant to subheading/statistical provision, information on the rates of import duty applicable to covered goods, as well as other information relevant to importers.

The following is an excerpt from the HTSUS, showing how the schedule organizes and presents information for goods of 10-digit provision 3204.15.3500. Note that the three sub-columns under the “Rates of Duty” column at the right of the excerpt provide information on the duties applicable at import. The specific duty rate depends on the country from which the goods originate, whether the U.S. is party to a trade agreement with the country in question, and the status of trade relations with that country. For trade with Canada and Mexico, attention should be paid to the columns labeled “General” and “Special.”<sup>2</sup>

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		2
				1	General	
3204.15.35	00	Solubilized vat orange 3; Vat blue 2; Vat red 44; and Vat yellow 4, 20.....	kg.....	6.5% <sup>1/</sup>	Free (A+, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, S, SG)	52.3%

HTS Classification

Chapter 32

Heading 3204

Subheading 3204.15

U.S. Tariff Line: 3204.15.35

U.S. Statistical Breakout: 3204.15.3500

Product Description

Potential Preferential Treatment (duty free)

with Canada and Mexico

under USMCA

**Figure 1: HTS Classification**

If the rate listed in the “General” column is “free,” the duty rate is zero, regardless of whether the product meets the rules of origin of any free trade agreement. A USMCA certificate of origin is not required to receive duty-free treatment for these goods.<sup>3</sup>

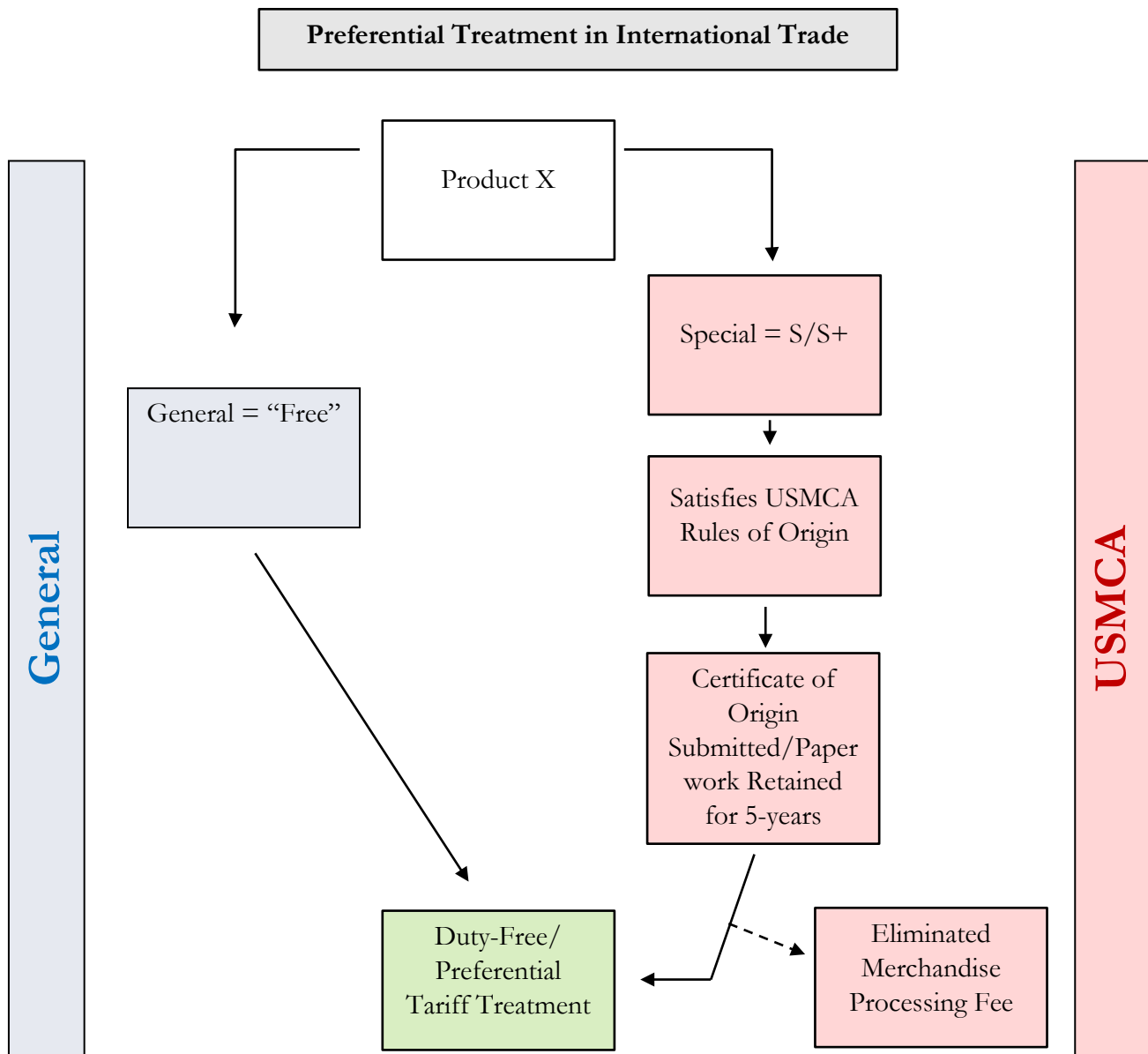
<sup>1</sup> The HTSUS also incorporates several appendixes relating to specific classes of goods, and which may be relevant to their classification and duty treatment in the United States. Goods subject to specific appendixes include certain intermediate chemicals for dyes, which may be eligible for duty-free treatment in the United States regardless of whether they have originating status under USMCA.

<sup>2</sup> Column “2” indicates rates that apply to goods from countries listed in General Note 3(b) to the HTSUS – currently only Cuba and North Korea. These are countries with which the United States does not maintain normal trade relations and, in general, imports from these countries are prohibited.

<sup>3</sup> If the good is generally duty-free, the good will receive duty-free treatment when traded without needing to satisfy USMCA criteria. However, it may make sense, depending on the product, to nonetheless claim USMCA treatment – for example, to avoid U.S. Merchandise Processing Fees. This is a good- and producer-specific decision not covered in greater detail in this document.



If the rate in the “General” column is not “free,” the trader should then move to the “Special” column. Items that are covered by USMCA and may receive preferential tariff treatment under the USMCA are indicated by an “S” (or “S+” for special agricultural goods). If a good has an “S” or “S+,” the good will receive preferential treatment if it satisfies the requisite USMCA origin criteria.



### III. Locating Articles in the Harmonized System (HS)

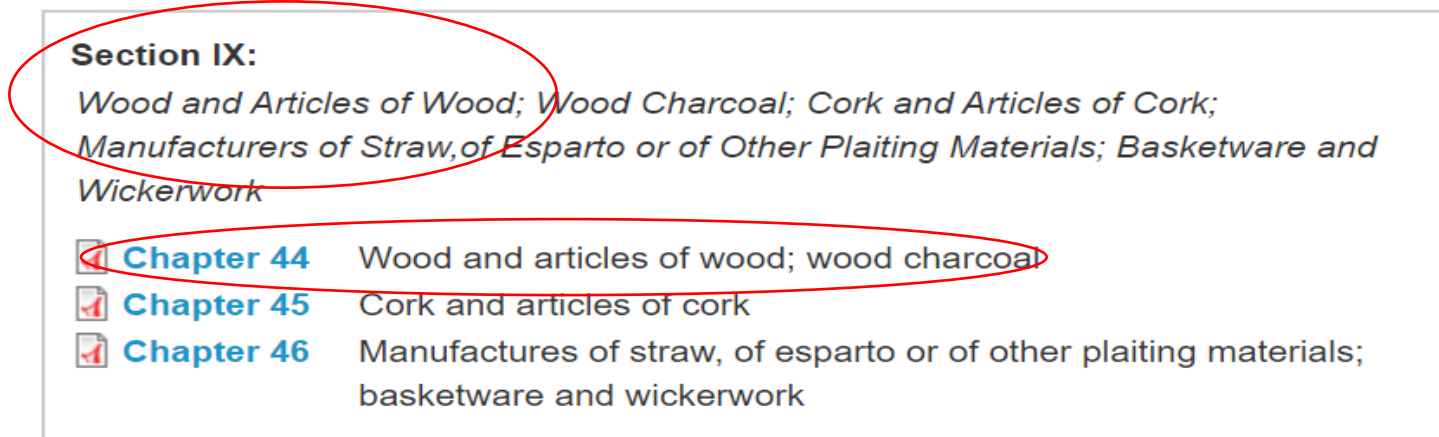
Tariff classification can be a complex process. While some products are easy to classify, detailed technical knowledge may be required to classify other goods, including certain chemicals and chemical-based goods. There are also cases in which a product may fall, facially, within multiple classifications, at which point strict legal rules must be applied to determine classification. Given the complexity of the process, many companies have developed specific internal procedures for determining the classification of their products, which may involve consulting with outside experts. With that caveat, below is an example of a classification analysis that is based on a review of the HTSUS, to illustrate how goods may be located within the HS.

An importer of wooden picture frames is preparing to bring goods into the United States from Canada, and wishes to understand if they will be eligible for duty-free importation under the USMCA. To determine the applicable USMCA rule of origin for the frames, the importer must first locate the correct 6-digit HS code.

#### Step 1:

The importer begins by accessing the HTSUS (located [HERE](#)) and reviewing the General Rules of Interpretation. These are the overarching rules governing tariff classification. The most fundamental of these rules states that “classification shall be determined according to the terms of the headings and any relative section or chapter notes.”

The importer then begins looking for Sections that contain Chapters that seem likely to cover the wooden picture frames – perhaps looking for Sections/Chapters that cover ‘wood,’ ‘frames,’ ‘household miscellaneous,’ etc. As seen below, the importer finds Section IX, which covers “Wood and articles of wood,” among other things, and within Section IX, Chapter 44 – “Wood and articles of wood; wood charcoal.”



*Figure 2: HTSUS Section & Chapters*

#### Step 2:

The importer would then access the PDF of Section IX and Chapter 44 and look over the Section and Chapter Notes to determine whether wooden picture frames are excluded for any reason from the scope of either Section IX or Chapter 44. These Notes will indicate whether goods that seem likely to fall within the scope of a particular Section or Chapter are in fact excluded. For example, while wooden picture frames would seem to fall naturally with the scope of a Section or Chapter covering “articles of wood,” the Notes might indicate that they are reserved for a later Section/Chapter covering “miscellaneous manufactured articles.”

While Section IX is one of the few Sections that has no specific Notes, there are Notes for Chapter 44. A partial excerpt from the Notes to Chapter 44 is provided below. Reading the Chapter 44 Notes in their entirety, there is no Note that excludes wooden picture frames from the scope of Chapter 44.



Notes

1. This chapter does not cover:
  - (a) Wood, in chips, in shavings, crushed, ground or powdered, of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes (heading 1211);
  - (b) Bamboo or other materials of a woody nature of a kind used primarily for plaiting, in the rough, whether or not split, sawn lengthwise or cut to length (heading 1401);
  - (c) Wood, in chips, in shavings, ground or powdered, of a kind used primarily in dyeing or in tanning (heading 1404);
  - (d) Activated charcoal (heading 3802);
  - (e) Articles of heading 4202;
  - (f) Goods of chapter 46.

*Figure 3: Excerpt from HTS Chapter 44 Notes*Step 3:

The importer would next review the headings of Chapter 44 in order. Headings 44.01-44.13 do not cover finished wooden articles, but rather, wood in forms suitable for further processing or manufacturing (lumber, plywood, densified wood in blocks, etc.). Heading 4414, however, specifically covers “wooden frames for paintings, photographs, mirrors, or similar objects.” There is only one subheading under heading 44.14: subheading 44.14.00, the scope of which is coextensive with the heading. Therefore, the appropriate 6-digit HS code for the wooden picture frames is 44.14.00. Further, the “Special” column of the HTSUS for this subheading contains an “S,” which indicates that the importer could receive preferential treatment under the USMCA if the product complies with the USMCA Rules of Origin. The next section discusses how to determine whether the product in fact complies.

4414.00.00	00	Wooden frames for paintings, photographs, mirrors or similar objects.....	No.....	3.9% <sup>2/</sup>	Free (A*, AU, BH, CA, CL, CO, D, E, IL, JO, MA, MX, OM, P, PA, PE, S, SG) 0.3% (KR)	33 1/3%
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*Figure 4: Excerpt from HTS Chapter 44*

## IV. General Rules of Origin

Trade Agreements, like the USMCA, grant preferential treatment to “originating” goods that are exported from and then imported into signatories of each Agreement. This means that when a good satisfies the criteria laid out by an Agreement, it is not subject to the import tariffs and duties that would normally apply. The goal of Trade Agreements is to encourage the retention of manufacturing and movement of finished products within the borders of signatory countries.

In order to receive the benefits of the USMCA, the importer, exporter or producer of good being shipped between signatory countries must certify that the good is originating.<sup>4</sup> This certification is an endorsement by the certifier that the goods in question satisfy the specified criteria laid out in the USMCA, and therefore, are to be given preferential treatment. Under the USMCA, there are four main criteria under which a good can be deemed originating.

**1. Criterion A. The good is wholly obtained or produced entirely in the territory of one or more of the Parties.**

This means the good has been extracted from or grown/raised either in the United States, Mexico, and/or Canada. **This criterion mainly applies to minerals, agricultural goods and seafood, and certain items directly obtained from such goods (e.g., animal hides).** A full list of what is covered under this criterion is available under USMCA’s Article 4.3, located [HERE](#).

**2. Criterion B. The good is produced entirely in the territory of one or more of the Parties using non-originating materials and the good satisfies all applicable requirements found in Annex 4-B, located [HERE](#).**

This criterion allows goods manufactured in the United States, Canada, and/or Mexico, but which contain components or materials made elsewhere, to qualify for duty-free trade between the three countries. To satisfy this criterion, each non-originating material used in the production of the finished good must comply with the specific rule of origin for the finished good. This may require the non-originating materials to be classified under one or more tariff provisions prior to processing and production, and the finished good to be classified under another new tariff provision upon completion of processing. In some cases, no change in tariff classification will be required, provided that a certain amount of value is added to the product through Canadian, Mexican, and/or U.S. processing operations. USMCA’s Annex 4-B defines exactly what changes in tariff classification or value must occur for each good to be considered originating.

To determine the appropriate, product-specific rule under Annex 4-B, the 6-digit HS classification for the finished product must be located. To utilize the HTSUS as a guide to 6-digit classification, look [HERE](#). After the 6-digit HS classification is determined, the rule for goods with that classification can be located within Annex 4-B of the USMCA. (Annex 4-B can be found [HERE](#). However, the Annex 4-B rules can also be found at General Note 11 of the HTSUS, which reproduces the USMCA rules of origin). Depending on the product-specific rule, it may be necessary to further determine the HS classifications for the non-originating component materials, at the 2 to 6 digit levels.

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<sup>4</sup> This certification is not required for non-commercial shipments or commercial imports into the U.S. valued at less than \$2,500, provided the importation does not take the form of a series of importations that may be considered to have been undertaken for the purpose of evading U.S. regulations or procedures governing preferential treatment.

By way of illustration, consider a U.S. producer of pork sausages that wishes to export pork sausages to Mexico,<sup>5</sup> and needs to understand whether it can certify the goods as “originating” under USMCA. After consulting the HTSUS and other relevant sources, the exporter determines that the 6-digit HS code for pork sausages is 16.01.00, covering “sausages and similar products, of meat.” The exporter reviews the Annex 4-B rules for goods of subheading 16.01.00, and finds that there is a single rule of origin applicable to all goods of Chapter 16.

## **Section IV - Prepared Foodstuffs; Beverages, Spirits and Vinegar; Tobacco and Manufactured Tobacco Substitutes (Chapter 16-24)**

### **Chapter 16 Preparations of Meat, of Fish or of Crustaceans, Molluscs or Other Aquatic Invertebrates**

**16.01-16.05** A change to heading 16.01 through 16.05 from any other chapter.

*Figure 5: Annex 4-B Rules for HS Chapter 16*

The exporter next considers the origin and classification of the materials used to produce the sausage. Frozen pork meat (HS heading 02.03) is imported into the United States from Germany and mixed with spices imported from India (HS headings 09.07-09.10) and combined with U.S.-produced casings to make pork sausage (HS 16.01). The materials that originate outside the USMCA territory (the pork meat and the spices) are both classified in Chapters other than Chapter 16. Therefore, the non-originating materials underwent a tariff classification change as specified in Annex 4-B, to headings 16.01-16.05 from “any other chapter” (Chapter 2 [HS 02.03] & Chapter 9 [HS 09.07-09.10]) to “heading 16.01 through 16.05” (HS 1601).



*Figure 6: Annex 4-B Analysis for HS Chapter 16*

The example above involves a product-specific rule of origin that is based on a change in tariff classification. Certain Annex 4-B rules of origin, however, specify that products can be deemed originating based on value added through processing in the USMCA territory, otherwise known as regional value content or RVC.

As an example, consider a precious metal watch (HS 91.01.11) that is made in Canada from Chinese watch springs (HS 91.14.10). The Canadian producer wishes to export the watch to the United States, and wants to determine if duty-free status is available under USMCA. The Annex 4-B rule for goods of HS heading 91.01 is as follows:

<sup>5</sup> To determine whether pork sausages are dutiable in Mexico in the first instance, the exporter will need to consult the Mexican tariff schedule.

**Chapter 91      Clocks and Watches and Parts Thereof**

- 91.01-91.06      A change to heading 91.01 through 91.06 from any other chapter; or
- A change to heading 91.01 through 91.06 from heading 91.14, whether or not there is also a change from any other chapter, 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.

*Figure 7: Annex 4-B Rules for heading 9101*

The non-originating Chinese watch springs do not undergo a change to heading 91.01 from a Chapter outside of Chapter 91, because they are classifiable in heading 91.14. However, the rule of origin for goods of heading 91.01 provides an alternative means of qualifying the watches as originating – compliance with an RVC requirement.

The USMCA provides two differing formulas for calculating RVC. These formulas are the same as under NAFTA, and the calculation may be done by either the importer, the exporter, or the producer.

The Transaction Value Method:

$$\left( \frac{\$TV - \$VNM}{\$TV} \right) \times 100 = \text{RVC\%}$$

- i. RVC is the regional value content, expressed as a percentage;
- ii. TV is the transaction value of the good, or more simply, what the good sold for adjusted to exclude any costs incurred in the international shipment of the good; and
- iii. VNM is the value of non-originating materials including materials of undetermined origin used by the producer in the production of the good.

The Net Cost Method:

$$\left( \frac{\$NC - \$VNM}{\$NC} \right) \times 100 = \text{RVC\%}$$

- iv. RVC is the regional value content, expressed as a percentage;
- v. NC is the net cost of the good excluding sales promotion, royalties, and packing/shipping; and
- vi. VNM is the value of non-originating materials including materials of undetermined origin used by the producer in the production of the good.

Assume that the transaction value of each watch is \$185.00, while the net cost is \$175. The value of the non-originating watch parts is \$75.00. The regional content under the transaction value method is as follows:

$$\left( \frac{\$185.00 - \$75.00}{\$185.00} \right) \times 100 = 59.46\%$$

Under this method, the watch is not originating because it fails to meet the requisite RVC of 60%. But, consistent with the relevant Annex 4-B rule, the producer can still attempt to qualify the good by calculating the RVC under the net cost method. The RVC under the net cost method is as follows:

$$\left( \frac{\$175.00 - \$75.00}{\$175.00} \right) \times 100 = 57.14\%$$

Because the RVC is at least 50% when the net cost method is used, the watch is originating and qualifies for duty-free importation into the United States.

#### **A note on *de minimis*.**

Before moving on from Criterion B, it should be noted that the USMCA provides a 10% *de minimis* rule for goods that contain non-originating materials that do not undergo an applicable shift in tariff classification. Under this rule, if the value of the non-originating materials that do not undergo an applicable change in tariff classification is not greater than 10% of the transaction value of the finished good or its total cost, the good is originating despite the non-originating materials' lack of a tariff shift.

Note that this rule does not permit a party seeking to ascertain whether a good is "originating" to ignore up to 10% of non-originating value. If a product has 10% or less of non-originating materials that do not undergo an applicable tariff shift, the *de minimis* threshold can be used to achieve preferential tariff treatment. If, however, a product has 12% non-originating materials that do not undergo such a shift, the *de minimis* rule does not apply, and cannot be used to achieve originating status.

Finally, there are some exceptions to the *de minimis* rule. Most of these exceptions relate almost entirely to agricultural and food products, though certain exceptions also apply to mineral products. A complete list of exceptions to the *de minimis* rule can be found in Annex 4-A to the USMCA rules of origin. Textile products may also be subject to specialized *de minimis* rules, pursuant to USMCA Articles 4.12 and Chapter 6.

### **3. Criterion C. Produced entirely in the territory of one or more of the Parties exclusively from originating materials.**

This means the goods are manufactured from materials that in themselves originate from the United States, Canada, or Mexico. This criterion would apply to the pork sausages discussed in the example above if the frozen pork meat originated from the United States, the spices originated from Mexico, and the casings originated from and production happened in Canada. Likewise, it would apply to the precious metal watches if they were produced in the United States entirely from materials originating in Canada.

### **4. Criterion D. The good is not classified in Chapters 61-63 of the HS and is produced entirely in the territory of one or more of the Parties; but one or more of the non-originating materials provided for as parts under the Harmonized System used in the production of the good cannot satisfy the requirements set out in Annex 4-B because both the good and its materials are classified in the same heading and/or subheading, or the good was imported into the territory of a Party classified as an assembled good; and the regional value content of the good is not less than 60% if the transaction value method is used, or not less than 50% if the net cost method is used.**

This Criterion is best thought of as having three distinct components/requirements:

- a. **First, the final good is not classified in Chapters 61-63 but has been produced entirely in a USMCA signatory Country.**

This is the simplest and most straightforward of the three parts. The operative facts are establishing classification outside of Chapters 61-63, and where the final good is produced.

- b. **Second, the good is classified in the same heading/subheading as its parts, or the parts were imported into the USMCA territory as an “assembled good,” thus rendering them classifiable in the same tariff heading or subheading as the finished product.**

This requirement is met when both the good and its parts are classified under the same tariff heading or subheading. Tariff headings and subheadings that cover both a finished good and its parts are most prevalent in HS Chapters 84 and 85, which relate to machinery and electronics. This requirement is also met if the non-originating components of a good assembled in the USMCA territory were classified, at importation, as the finished product in disassembled form pursuant to Rule 2a of the HS’s General Rules of Interpretation.

- c. **Third, despite failing to comply with Annex 4-B’s product-specific tariff shift requirements due to (b) above, the good incorporates a certain RVC.**

To satisfy this part of the criterion, the RVC must be at least 60 percent if the transaction value method is used, or 50 percent if the net cost method is used.

In applying Criterion D’s RVC criterion, it should be noted that USMCA Chapter 4, Article 4.5, Paragraph 6 requires use of the net cost method if Annex 4-B (Product-Specific Rules of Origin) does not provide a rule based on the transaction value method. Thus, under Criterion D, if Annex 4-B’s product-specific rule for the good being traded does not specify an RVC rule, the good will only qualify for preferential treatment if it has the required minimum RVC of 50% under the net cost method. USMCA Chapter 4, Article 4.5, Paragraph 8 provides guidelines for calculating RVC using the net cost method. These guidelines can be found [HERE](#).

Due to the requirements of (b) above, Criterion D will generally only be applicable to assembled, manufactured goods like machinery, particularly those classified in tariff headings that cover both finished goods and their parts. Due to the strict limitations imposed by Criterion D, it may not be relevant for coatings products.



## V. Special Rules for Products of the Chemical or Allied Industries

As noted above, most Annex 4-B rules of origin require a non-originating material to either undergo a change in tariff classification, or require USMCA-territory processing to confer a specific amount of RVC on the finished good.

However, the Annex 4-B rules for goods classified within HS chapters 28-38 (**Section VI - Products of the Chemical or Allied Industries (Chapter 28-38)**), provide additional means for demonstrating goods to be originating. Specifically, Annex 4-B provides eight Section-specific rules, beyond the rules for individual products of the Section, that can be used to qualify certain goods of HS Chapters 28-38.

These eight specific rules are: 1) chemical reaction; 2) purification; 3) mixtures and blends; 4) changes in particle size; 5) standards material; 6) isomer separation; 7) separation prohibition; and (8) biotechnological processes. These rules are located [HERE](#).

Many Chapter 28-38 products, even if produced in the USMCA territory, will incorporate non-originating materials. To the extent that non-originating materials are used, there are essentially three criteria that the resulting Chapter 28-38 product can meet to obtain originating status and gain preferential USMCA treatment.

- First, if a product classified in Chapter 28-38 satisfies one of the eight rules provided in Annex 4-B's special notes for goods of Section VI, the product is deemed originating under Criterion B.
- Second, if a product classified in Chapters 28-38 FAILS to satisfy one of the eight Section VI rules, the product can still be originating under Criterion B if it meets the applicable Annex 4-B requirements for goods of its specific Chapter/heading.
- Third, if the product fails to meet these rules, the product could still meet the *de minimis* rule.<sup>6</sup>

As an example, a manufacturer produces two types of ink – ink engineered in shapes for insertion into a multi-function printer, and ink used for drawings. The inks are manufactured by mixing together differing blends of pigments and other ingredients. Inks and other pigments are covered under HS Chapter 32 – and therefore the seven chemical rules come into play. Of the eight chemical rules, the one that appears potentially applicable to ink produced by mixing/blending materials is **Rule 3: Mixtures and Blends**. That rule specifies:

A good of Chapter 28 through 38, except for a good of Chapter 28, 29, or 32, heading 33.01 or 38.08, or subheading 3502.11 through 3502.19 is an originating good if the deliberate and proportionally controlled mixing or blending (including dispersing) of materials other than the addition of diluents, to conform to predetermined specifications occurs in the territory of one or more of the Parties, resulting in the production of a good having essential physical or chemical characteristics that are relevant to the purposes or uses of the good and are different from the input materials.

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<sup>6</sup> It may also be possible for goods of Chapters 28-38 that incorporate non-originating materials to be originating under Criterion D's requirements, but only in limited cases. This is because Chapters 28-38 do not include any headings that expressly cover both a good and its parts. Further, the nature of most chemical products is such that their component materials are largely not susceptible to classification under Rule 2a of the General Rules of Interpretation, which relates to assembled products in disassembled form.

Ink engineered in shapes for insertion into a multi-function printer is classified under HS 32.15.11. It would not satisfy Rule 3, because goods of Chapter 32 are not covered by the rule's parameters. The producer of the ink would then have to determine if an additional chemical rule could apply. If none does, they would move to review the specific Annex 4-B rules for goods of Chapter 32 and subheading 32.15.11.

However, assuming that the ink is being imported into the United States, the United States does not impose any import duties on goods of HTS 3215.11 that are in engineered shapes for insertion into multifunction printers (*i.e.*, goods of HTSUS provision 3215.11.1000). Therefore, the ink does not need to satisfy USMCA criteria to be imported duty-free into the United States – it receives such treatment simply due to the nature of the good in combination with broader U.S. trade relations.

3215	Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid:				
3215.11	Printing ink:				
3215.11.10	Black:				
00	Solid:				
	In engineered shapes, for insertion into apparatus of subheadings 8443.31, 8443.32 or 8443.39	kg	Free <sup>11</sup>		10%

The other ink, used for drawings, would be classified under HS 32.15.90, covering “writing or drawing ink and other inks” that do not take the form of “printing ink.” As noted above headings of HS Chapter 32 are not covered by chemical Rule 3. Therefore, assuming that none of the other chemical rules applies, the ink would need to satisfy either the Annex 4-B product-specific rule for goods of Chapter 32/subheading 32.15.90, or the *de minimis* content requirements, to be deemed originating.

According to Annex 4-B, the product-specific rule for goods of HS headings 32.07 through 32.15 requires non-originating materials to undergo a change to these headings from any other chapter. However, according to the Annex 4-B note to Chapter 32:

pigments or coloring materials classified under 32.06 or 32.12 shall be disregarded in determining the origin of the goods classified under 32.07 through 32.15, except for any such pigments or materials based on titanium dioxide.

Assume that the ink is formulated in Canada, and that the non-originating materials are Indian pigments. If these pigments are classified in headings 32.06/32.12 and are not based on titanium dioxide, the ink will be considered originating under Annex 4-B's note to Chapter 32.

If the Indian pigments do not satisfy the requirements of Annex 4-B's Note to Chapter 32, and do not otherwise undergo the tariff shift required by the product-specific rule for goods of heading 32.15, it is possible that the ink may still satisfy the *de minimis* rule, and therefore satisfy the origin criteria. If this is the case, the ink will still be able to receive USMCA preferential treatment.

## VI. Obtaining USMCA Benefits – Certifying Origin of Goods

Even if a good satisfies the USMCA rules of origin, it will not receive duty-free treatment unless it is certified as originating. To obtain preferential tariff treatment at the time of entry, goods must be accompanied by documentation that certifies originating status, and the certification must be in the possession of the importer at the time a claim for preferential treatment is made. This certification must be signed by either the importer, exporter, or producer in the capacity of the certifier; this is the party endorsing that the good satisfies the USMCA rules of origin. There is no official certificate of origin – however, all certifications must contain specific basic data related to the transaction, as further described below.

Certifications and information used support the certification must be retained for 5 years. This includes records and supporting documentation related to the importation, all records and supporting documents related to the origin of the good (*e.g.*, production records, records of the sourcing, value, and processing of the non-originating materials, etc.), and records and supporting documentation necessary to demonstrate compliance with USMCA’s requirement that goods be shipped directly between the signatory countries.

The United States, Mexico, or Canada may apply measures as the circumstances warrant when a certifying entity within its territory offers a certification for goods that do not comply with the USMCA requirements, or for which the certifier has failed to maintain the appropriate supporting documentation. If the Customs authorities in the country of import determine that the importer made false or unsupported claims for preferential USMCA treatment, the claims will be denied, and the importer will be assessed duty after the fact. Penalties may also be assessed in certain cases. Establishing processes for accurate organization and retention of documents will ease any potential audits and help companies easily prove compliance if necessary.

A certification of origin that is the basis for a claim for preferential tariff treatment under the USMCA shall include:

- a. Indication of whether the certifier is the Exporter, Producer, or Importer;
- b. Certifier’s name, title, address (including country), e-mail address, and telephone number;
- c. Exporter’s name, address (including country), and contact information, producer’s name, address (including country), and contact information, and importer’s name, address (including country), and contact information;
- d. Description and HS Tariff Classification of the Good – the HS number should be at the 6-digit level; if the certificate covers a single shipment, the invoice number of the shipment should be included in the description of the goods
- e. The relevant origin criterion under which the good is being certified (*i.e.*, Criteria A, B, C, or D, as described above and defined in USMCA’s Article 4.2 criteria;
- f. If the certificate will cover multiple shipments, indicate the relevant period of validity (up to 12 months)
- g. Certifier’s signature

Many freight and shipping companies have certification forms accessible online that can be filled out and used to certify USMCA goods. The following page contains a sample of what a form might look like and how the information will be collected.

## 0. Certifier

☐ Importer ☒ Exporter ☐ Producer

### 1. Certifier's Information

Name	American Coatings Association		
Street Address Including City, State, and ZIP Code	901 New York Avenue NW, Suite 300 West, Washington DC 20001, USA		
Telephone	202-462-6272	Email	XXX@paint.org
Billing Tax ID <sup>7</sup>	12-3456789		

### 2. Exporter's Information (if different than the certifier)

Name			
Street Address Including City, State, and ZIP Code			
Telephone		Email	
Billing Tax ID			

### 3. Producer's Information (if different than the certifier)

Name	Paint & Co., LLC		
Street Address Including City, State, and ZIP Code	123 Hennepin Avenue, Boston MA, 02101, USA		
Telephone	123-456-7890	Email	paint@company.com
Billing Tax ID	98-7654321		

### 4. Importer's Information (if different than the certifier)

Name	Wood Frames, LLC		
Street Address Including City, State, and ZIP Code	765 Lake Street, North York, ON M2J 2A5, Canada		
Telephone	416-444-5555	Email	frames@woodworks.net
Billing Tax ID	12-3456777		

### 5. Description of the Goods

Part/SKU Number	KS899ADJ
Description	5in. by 10in. solid maple wood frames for photographs – pack of 10  <i>If single shipment – Provide Invoice Number</i>

### 6. HS Tariff Classification

4414.00  <i>This number is found within the HS. Only 6-digits are required.</i>  <i>Thus, XXXX.XX</i>
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### 7. Origin Criterion

Criterion C - produced entirely in the United States exclusively from materials originating from the United States.
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### 8. Blanket Period

Period covered by certification (if applicable) for up to 12 months – 7/15/2020 to 9/1/2020

### 9. Signed by the Certifier

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.

CERTIFIER'S SIGNATURE  DATE 7/1/2020

<sup>7</sup> Billing Tax ID is not a required data point under USMCA. However, it may be included for better record keeping and identification.

## VII. USMCA Certification Check List

**Step 1:** Determine the 6-digit classification of the good being traded.

The [HTSUS](#) or the tariff schedules of Mexico and Canada, as well as other relevant sources, such as customs rulings, the Explanatory Notes to the HS, etc., may be consulted as part of this determination.

As part of this analysis, a party may wish to also determine whether a good would be subject to any import duties in the importing country, even in the absence of a USMCA certification.

**Step 2:** Determine whether the good could receive preferential treatment under USMCA. If consulting the HTSUS, look to see if the “Special” column for the relevant tariff code contains either an S or an S+.

**Step 3:** Determine whether the good meets any of the USMCA origin criteria.

Assuming the good contains non-originating materials, consult Annex 4-B’s product-specific rules. If the good is classified in HS Chapters 28-38, remember to consider whether the seven Annex 4-B rules for goods of Section XI of the HS are applicable. If a good of these chapters does not satisfy one of the seven Section XI rules, it may still gain preferential treatment under the Chapter/heading-specific rules of origin, or under the *de minimis* rule.

**Step 4:** Assuming the good qualifies, indicate your good’s eligibility for preferential treatment by filling out a certificate of origin form containing all of the requisite information. All records to support the certification should be retained for 5-years. These may include production records, records of the sourcing, value, and processing of the non-originating materials, a certification of origin received directly from the good’s producer, etc.

## VIII. Additional Resources

U.S. Customs and Border Protection, *United States-Mexico-Canada Agreement (USMCA) Implementing Instructions*, June 30, 2020. <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/USMCA%20Implementing%20Instructions%20-%202020%20Jun%2030%20%28Finalv1%29.pdf>

Harmonized Tariff Schedule of the United States (current edition). <https://hts.usitc.gov/current>

Uniform Regulations Regarding the Interpretation and Administration of the Rules of Origin. <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/UniformRegulationsRulesofOrigin.pdf>

United States-Mexico-Canada Agreement, Chapter 4 Rules of Origin. <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/04-Rules-of-Origin.pdf>

Understanding HS Codes and the Schedule B. <https://www.trade.gov/harmonized-system-hs-codes>