Changes to Existing Law Required to Bring the United States Into Compliance With Obligations Under the Agreement between the United States of America, the United Mexican States, and Canada (USMCA)

Tariff Treatment and TRQs: With respect to industrial goods and textiles, the USMCA preserves the duty free treatment that had been achieved under the North American Free Trade Agreement (NAFTA). With respect to agricultural products, as part of a package through which the United States gained additional access for dairy, poultry, and egg products into Canada, the USMCA includes additional U.S. market access commitments for Canadian products. These include the elimination of tariffs on certain agricultural products and creation of tariff rate quotas for certain agricultural products from Canada, including for dairy, sugar, sugar containing products, peanuts and peanut products, and cotton. The rules of origin with respect to sensitive agricultural products, such as dairy, sugar, and peanuts, will ensure that the products originate in North America. The USMCA implementing bill must provide authority to implement the tariff treatment and tariff rate quotas provided for under the USMCA.

Duty Drawback: The USMCA implementing bill must contain provisions in order to implement the duty drawback provisions contained in Article 2.5 (Drawback and Duty Deferral Programs) and paragraph 11 of Annex 3-B (Agricultural Trade Between Mexico and the United States) of the USMCA. For the most part, the USMCA maintains the treatment currently provided to Canada and Mexico with respect to duty drawback pursuant to the NAFTA. The one exception is a change to the exception for sugar to reflect new tariff nomenclature and expansion of the exception to include sugar-containing products.

NAFTA treatment related to duty drawback was provided for in section 203 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3333). It provides exceptions to the limitation on drawback for certain goods traded between the Parties to the NAFTA. In order to maintain the treatment currently provided under those provisions once the USMCA enters into force, conforming changes will need to be made to section 203 of the North American Free Trade Agreement Implementation Act, sections 311, 312, 313, and 562 of the Tariff Act of 1930 (19 U.S.C. 1311, 1312, 1313, and 1562), and section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)).

Merchandise Processing Fee: The USMCA implementing bill must contain provisions to implement the obligations regarding the waiver of the merchandise processing fee with respect to certain goods. Under Article 2.16.3 (Administrative Fees and Formalities), the United States agreed not to charge the merchandise processing fee for originating goods under the USMCA. This maintains the treatment provided for originating goods under the NAFTA.

However, in Annex 6-A, Section C, paragraph 7 of the USMCA, the United States agreed to also waive the merchandise processing fee for Trade Preference Level (TPL) goods. Section

AILA Doc. No. 19013034. (Posted 1/30/18)

13031(b) of the Consolidated Omnibus Reconciliation Act of 1985, as amended (19 U.S.C. 58c), will need to be amended to provide for the treatment with respect to TPL goods. A conforming change will also need to be made to maintain the treatment provided under the NAFTA with respect to originating goods.

Rules of Origin: The USMCA implementing bill must contain provisions to implement the rules of origin, origin procedures, and customs measures to provide preferential tariff treatment for eligible goods under the new rules of the USMCA. The USMCA implements significant changes to the rules of origin for automotive goods compared to NAFTA: it ends NAFTA's tracing and "deemed originating" requirements, increases the required regional value content for vehicles and vehicle parts, and requires that certain core vehicle parts must be originating for a vehicle to be originating. In addition, the rules, as set out in the appendix to Chapter 4 of the USMCA, require that a set minimum amount of steel and aluminum purchases by a producer of originating vehicles be originating and that a minimum amount of North American content by those producers be produced in a plant or facility with an average wage of at least $16 per hour, through a new "Labor Value Content" rule. The USMCA also makes changes to the rules of origin for other products, including updates to the rules for optical fiber, and for certain steel, glass, titanium, and chemical products.

The implementing bill will include changes to origin procedures compared to the NAFTA and introduce new customs procedures, such as allowing importers as well as exporters and producers to makes certifications of origin and enhancing cooperation and enforcement tools for compliance with the rules for all goods. The implementing bill will provide for processes to allow appropriate flexibilities to support a smooth transition from NAFTA to the USMCA and ensure enforcement with the assistance of relevant U.S. agencies.

In order to implement and provide for the enforcement of USMCA provisions regarding certifications of origin, the USMCA implementing bill must amend at least the following sections of the Tariff Act of 1930:

1. Section 592(c) of the Tariff Act of 1930 as amended (19 U.S.C. 1592(c)). The amendment will exempt an importer from penalties for an invalid claim that a good qualifies as an originating good under the USMCA, provided that the importer on becoming aware and prior to the Government's discovery of the error voluntarily corrects the claim and pays any customs duty owed. This amendment is necessary to comply with Article 5.4.2 (Obligations Regarding Importations) of the USMCA.

2. Section 592 of the Tariff Act of 1930 as amended (19 U.S.C. 1592). The amendment will provide for the imposition of penalties on U.S. producers and exporters that make false certifications that goods qualify as originating goods under the USMCA. This amendment is necessary to comply with Article 5.6

AILA Doc. No. 19013034. (Posted 1/30/18)

(Obligations Regarding Exportations) of the USMCA.

3. Section 508 of the Tariff Act of 1930 as amended (19 U.S.C. 1508). The amendment will provide that any person that issues certifications stating that a good qualifies as an originating good under the USMCA must keep copies of such certifications and supporting documents and information for at least five years and render them for examination and inspection by U.S. customs officials, upon request. This amendment is necessary to comply with Article 5.8 (Record Keeping Requirements) of the USMCA.

4. Section 520(d) of the Tariff Act of 1930 as amended (19 U.S.C. 1520(d)). The amendment will provide that, when a good qualifying as an originating good under the USMCA is imported into the United States, the importer has at least one year from the date of importation to claim preferential tariff treatment under the USMCA for that good. This amendment is necessary to comply with Article 5.11 (Refunds and Claims for Preferential Tariff Treatment After Importation) of the USMCA.

In addition, in order to maintain the treatment currently provided under NAFTA once the USMCA enters into force, conforming changes to references to "NAFTA country" and NAFTA in the following provisions of law will be necessary:

1. Section 304(k) of the Tariff Act of 1930 (19 U.S.C. 1304(k)).

2. Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509).

3. Section 628(c) of the Tariff Act of 1930 (19 U.S.C. 1628(c)).

Textiles: The USMCA implementing bill will need to provide for the implementation of the rules of origin for textiles, including with respect to tariff preference levels (TPLs). The USMCA maintains the yarn-forward rules of origin of NAFTA, but changes certain NAFTA rules of origin to require that inputs such as sewing thread, pocketing, narrow elastic bands, and coated fabric be made in the region. The USMCA also restructured the rules and the quantitative limits governing TPLs in order to promote greater use of regional fibers, yarns, and fabrics. The USMCA implementing bill will also need to provide for specific verification procedures for textiles and apparel trade and actions to address customs offenses.

Special Agricultural Safeguard: The USMCA implementing bill must amend section 405(e) of the Uruguay Round Agreements Act (19 U.S.C. 3602(e)) to provide that goods from Canada or Mexico that qualify for preferential treatment under the USMCA must be exempted from any duty imposed under the special agricultural safeguard authority. The amendment is necessary to comply with Article 3.9 (Agricultural Special Safeguard) of the USMCA. In addition, U.S. Note

AILA Doc. No. 19013034. (Posted 1/30/18)

1 to Subchapter IV of the HTSUS needs amending to clarify that Mexican and Canadian goods subject to MFN tariff treatment can be subject to the special agricultural safeguard.

Government Procurement: Chapter 13 of the USMCA generally maintains the treatment currently provided under the NAFTA, but only with respect to Mexico. The USMCA implementing bill must amend sections 301 and 308 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 and 2518) in order to permit the President to designate products from Mexico as eligible for purposes of waiving discriminatory purchasing requirements under our government procurement law.

In addition, conforming changes are necessary to add or replace references to the NAFTA that appear in section 2511.

Exclusion from Global Safeguards: Article 10.2 (Rights and Obligations) of the USMCA replicates Article 802 (Global Actions) of the NAFTA, providing that the United States must exclude imports from Canada and Mexico from global safeguard actions, subject to certain conditions. The USMCA implementing bill will make conforming changes to sections 311 and 312 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3371 and 3372) in order to maintain the same treatment once the USMCA enters into force.

Dispute Settlement in Antidumping and Countervailing Duties: Articles 10.8 through 10.18 (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and related Annexes 10-B.1 through 10-B.5 of the USMCA, replicate Chapter 19 of the NAFTA, providing, among other things, for binational review and dispute settlement in antidumping and countervailing duty matters. The USMCA implementing bill must make conforming changes to subchapter IV of chapter 21 of title 19 of the United States Code (19 U.S.C. 3431 – 3438, and 3451).

In addition, the USMCA implementing bill must also make conforming changes, by adding references to the relevant provisions of the USMCA, to the following provisions of law in order to maintain the same treatment once the USMCA enters into force:

1. Chapter 95 of title 28, United States Code, at sections 1581 and 1584 (28 U.S.C. 1581 (Civil actions against the United States and agencies and officers thereof) and 28 U.S.C. 1584 (Civil actions under NAFTA or the US-Canada FTA)).

2. Sections 514, 516a, 771, and 777 of the Tariff Act of 1930, as amended (19 U.S.C. 1514(b) (Protests against decisions of Customs Service), 19 U.S.C 1516a (Judicial Review), 19 U.S.C. 1677 (Definitions), and 19 U.S.C. 1677f (Access to Information)).

Trade Remedy Duty Evasion: Article 10.7 (Duty Evasion Cooperation) of the USMCA

AILA Doc. No. 19013034. (Posted 1/30/18)

provides for cooperation between the Parties with respect to duty evasion of trade remedy laws. (There was no equivalent provision in the NAFTA). The USMCA implementing bill must amend section 414 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4374) to provide that Canada and Mexico shall be deemed countries signatory to a bilateral agreement, as provided for in subsection (b) for purposes of trade enforcement and compliance assessment activities of U.S. Customs and Border Protection that concern evasion by such country's exports. In consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate, the Administration may consider whether changes to 19 U.S.C. 1517 are strictly necessary or appropriate to implement Article 10.7 of the USMCA.

Temporary Entry: Consistent with the overall trade negotiating objectives under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, the USMCA does not require changes to U.S. immigration laws nor does it change access to visas under section 1101(a)(15) of the Immigration and Nationality Act (INA). Chapter 16 (Temporary Entry for Business Persons), in Annex 16-A, replicates the commitments contained in Section D of Annex 1603 of the NAFTA. In order to maintain the same treatment for Canadian and Mexican citizens once the USMCA enters into force, the USMCA implementing bill must make conforming changes to the following provisions of law:

1. Section 214 of the INA (8 U.S.C. 1184).

2. Section 604 of the Enhanced Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1773).

3. Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a(c)(1)(B)).

4. Section 101(a)(15)(E) of the INA (8 U.S.C. 1101(a)(15)(E)) (by creating a reference in the USMCA implementing bill so Canadian and Mexican citizens continue to be classified as nonimmigrants under the section).

Special rule for actions affecting cultural industries: Similar to Article 2106 (Cultural Industries) of the NAFTA, Article 32.6 (Cultural Industries) of the USMCA exempts certain measures adopted or maintained by Canada with respect to a cultural industry from a number of obligations under the USMCA. It also allows the United States to take a measure of equivalent commercial effect in response. The USMCA implementing bill must make conforming changes to subsection (f) of section 182 of the Trade Act of 1974 (19 U.S.C. 2242) in order to maintain the special rule for actions affecting United States cultural industries once the USMCA enters into force.

Energy Regulatory Measures: The Annex on Energy Regulatory Measures and Regulatory Transparency, attached to the exchange of letters executed on Nov. 30, 2018 between the United

AILA Doc. No. 19013034. (Posted 1/30/18)

States and Canada, which is integral to the USMCA, contains obligations with respect to energy regulatory measures similar to obligations under Chapter 6 of the NAFTA (Energy and Basic Petrochemicals). Section 1017(c) of the Energy Policy Act of 1992 (42 U.S.C. 2296b-6) contains a savings clause that references the NAFTA. The USMCA implementing bill must make a conforming change to that section to maintain the treatment provided once the USMCA enters into force.

United States Annex II: After consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate, the Administration will consider whether amendments to current provisions of law or new authorities are necessary in order to implement Annex II – United States – 8.

Express Shipments: After consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate, the Administration may include changes to section 901 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 1321) to implement Article 7.8.1 (Express Shipments).

Transition from NAFTA: The USMCA contains provisions regarding the transition between NAFTA and the USMCA, in particular with respect to binational panel reviews under Chapter 19 of the NAFTA and claims for preferential tariff treatment under NAFTA. The USMCA implementing bill will need to take those transitional provisions into account.

Other conforming changes: There are a number of other provisions in U.S. law that make reference to the NAFTA, in particular with respect to certain trade preference programs. Conforming changes to those provisions could be made in order to continue to provide the same treatment with respect to those programs.

Finally, the Administration, in consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate, may consider other provisions that may be strictly necessary or appropriate to provide for the fullest implementation and enforcement of the USMCA.

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AILA Doc. No. 19013034. (Posted 1/30/18)