THOMPSON HINE

International Trade Update

April 2020

Petitions by Vehicle Producers for Alternative Staging Regime for Compliance with USMCA Rules of Origin for Automotive Goods Due to USTR by July 1

Key Notes:

- Vehicle producers who want to use a different transition plan than the one specified in the USMCA for moving into compliance with the USMCA's rules of origin for automotive goods must submit a petition, which is now due July 1.
- Passenger vehicles and light trucks are discussed in the USTR procedures, but the procedures note that heavy truck producers may also use this process.

The United States-Mexico-Canada Agreement (USMCA) anticipates that vehicle producers will need some time to bring their supply chains into compliance with the USMCA's rules of origin for automotive goods to receive preferential duty treatment. Therefore, the USMCA provides a transition period that includes annually increasing regional value content (RVC) and labor value content (LVC) minimums.

The USMCA also provides that vehicle producers may request an alternative transition plan or "alternative staging regime" to bring their production into compliance with the USMCA's rules of origin. For light trucks and passenger vehicles, the alternative staging regimes may continue until January 1, 2025, or five years after the USMCA comes into force.[1]

In an April 21, 2020, *Federal Register* notice, the Office of the U.S. Trade Representative (USTR) announced procedures for North American producers of passenger vehicles or light trucks to submit petitions requesting an alternative staging regime. ***An interested vehicle producer must submit a petition with a draft alternative staging plan no later than July 1, 2020; and a final alternative staging plan, correcting any deficiencies, must be submitted no later than August 31, 2020***.

The Federal Register notice states that producers of heavy trucks or other vehicles, although having other rules of origin and regional value content requirements, may also request the alternative staging regime through this process.

USMCA Standard Staging Regime for Automobiles and Automotive Parts

The standard staging regime for automobiles and automotive parts is specified under the Automotive Appendix to Chapter 4 of the USMCA.[2] Depending upon the particular good, the Automotive Appendix provides for increasing minimum amounts of RVC and LVC over a period of three years. It includes additional requirements related to core items and steel and aluminum purchasing in North America. The transition time under the standard staging regime is until January 1, 2023, or three years from the USMCA coming into force.

[1] For heavy trucks, alternative staging regimes may continue until January 1, 2027, or seven years after the USMCA comes into force.

[2] Chapter 4 sets forth certain product-specific rules of origin for vehicles; regional value content thresholds for passenger vehicles, light trucks and parts (as based on averaging and a net cost method); mandatory requirements to produce core parts in the region; steel and aluminum purchasing requirements; and, labor value content requirements. *See also* USTR USMCA Autos White Paper.

USMCA Alternative Staging Regime

The USMCA provides that for a period ending no later than January 1, 2025, or five years after entry into force of the USMCA, whichever is later, "a passenger vehicle or light truck may be originating pursuant to an alternative staging regime." Heavy trucks may be originating under an alternative staging regime under January 1, 2027, or seven years after entering into force of the USMCA. After expiration of the alternative staging period, all claims of preferential treatment are required to meet the rules described in the USMCA's Automotive Appendix.

An alternative staging regime differs from the standard staging regime by providing additional time and a different phase-in of the new rules of origin requirements for passenger vehicles and light trucks, but does not replace any other rules of origin or any provisions of general applicability for these goods to claim preferential treatment under the USMCA.

To qualify for preferential treatment under an alternative staging regime, the regime for the vehicle must be approved by the USTR.

Petition for an Alternative Staging Regime

The *Federal Register* notice identifies the information a vehicle producer must include in its alternative staging proposal, as well as procedures for submission. Required information includes:

i. a cover letter requesting the alternative staging regime for specific vehicle models over a specified time period and summarizing the need for alternative staging as well as a commitment to meeting all requirements during and after the expiration of the alternative staging regime;
ii. all necessary, corporate-identifying information;
iii. information about the company's assembly capacity;
iv. information regarding production assets and the location of North American production facilities;
v. detailed production and sales information;
vi. a full listing of the vehicle models assembled in the United States, Mexico and Canada;
vii. the value of purchases of steel and aluminum in North America in 2019, with estimates of amounts that would be considered originating under Chapter 4 of the USMCA; and,
viii. detailed information on the company's wages for research and development (R&D) and information technology (IT) in North America for 2019.

A "credible plan" for meeting the alternative staging regime must also be provided. The USTR instructs that this should include a description of how the requested alternative staging vehicle models meet each of the necessary eligibility requirements for acceptance into the alternative staging regime; a description of the changes the company plans to make to its operations, sourcing, and vehicle content to meet the USMCA rules of origin for each of the alternative staging vehicle models (by addressing each of the requirements for regional value content, core parts, steel and aluminum, and labor value content); an annual calendar of new investments, sourcing changes, jobs, and other changes to operations, beginning with changes that occurred in calendar year 2019, and plans for 2020–2025; and a description of the corporate approval process for investments, sourcing changes, and other operational changes.

Petition Rules for an Alternative Staging Regime Covering Less than 10% of the Vehicle Producer's North American Production

If the passenger vehicles or light trucks covered by the petition are not more than 10% of the vehicle producer's total passenger vehicle or light truck production in the United States, Canada, and Mexico, then only limited information is required. This would include the specific vehicle models and time period, but exclude information regarding assembly capacity, production and sales, aluminum and steel purchases, and other data.

USTR Review and Approval of an Alternative Staging Regime

No later than 30 days after receipt of a petition, USTR will notify the vehicle producer if there are deficiencies in the petition, such as missing, inaccurate, or imprecise information that would result in petition denial. Any corrections to a deficiency must be submitted no later than August 31, 2020. USTR will consult with the Interagency Committee on Trade in Automotive Goods to determine whether to authorize use of the alternative staging regime for a vehicle producer. Before making any final determinations, USTR will provide a summary of the submitted petitions to the appropriate congressional committee. USTR will provide the determination in writing

and, if denied, the vehicle producer may request the reasons for the denial.

If the plan is approved, during the five-year transition (or seven years for heavy trucks), approved vehicle producers can avoid the 2.5% duty that must be paid for many non-complying vehicles under the current NAFTA regime. USTR will maintain a public list of the names of vehicle producers it has approved to use for the alternative staging regime. Approval by USTR to use an alternative staging regime applies only to the vehicle producer's eligibility to use the regime for imports into the United States. While coordinating with Mexico and Canada, USTR notes that a vehicle producer will need to provide a similar petition to Canada or Mexico under their respective procedures, in order to have the petition approved by each of the countries that are parties to the USMCA.

All submissions must be submitted via email to USMCAAutosCommittee@ustr.eop.gov

Thompson Hine LLP attorneys and professional trade members have extensive experience practicing before, and petitioning, the USTR and are available to discuss providing advice and assistance with the USMCA Alternative Staging Regime petition process.

FOR MORE INFORMATION

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