



## Overview

This provision provides for the allowance of each Party to level criminal, civil, or administrative penalties for violations of its laws and regulations pertaining to the new United States-Mexico-Canada Agreement (USMCA). This fact sheet highlights key changes from the North American Free Trade Agreement (NAFTA).

## References

- **USMCA**
  - *Final Text*: Chapter 5 and 7, Article 5.13 and 7.18
  - *HR 5430 Citation*: Title II, Section 202A
- **NAFTA**
  - *Final Text*: Chapter 5, Article 508

## Significant Changes in USMCA

Provision	USMCA	NAFTA
<b>Penalties</b>	<p><b>New in USMCA</b></p> <ul style="list-style-type: none"> <li>• Chapter 5 allows the Parties to impose the penalties.</li> <li>• Chapter 7 requires the Parties to impose penalties for a breach of customs laws, regulations or procedural requirements but ensures that clerical or minor errors are not treated as such a breach.</li> <li>• Chapter 7 also requires: the parties to adopt or maintain measures to avoid conflicts of interest in the assessment and collection of penalties and duties.</li> <li>• When a party imposes a penalty for a breach of its customs laws, regulations, or procedural requirements, it provides an explanation in writing to the person on whom the penalty is imposed, specifying the nature of the breach.</li> <li>• Each party must provide a person the opportunity to correct an error in a customs transaction that is a potential breach of a customs law, regulation, or procedural requirement, excluding fraud, prior to the discovery of the error by the Party.</li> </ul>	No provision.



## Detailed USMCA/NAFTA Side-by-Side

Provision	USMCA	NAFTA
<b>Penalties 5.13</b>	<ul style="list-style-type: none"> <li>Each Party shall maintain criminal, civil, or administrative penalties for violations of its laws and regulations related to this Chapter.</li> </ul>	<ul style="list-style-type: none"> <li>Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.</li> <li>Nothing in Articles 502(2), 504(3) or 506(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.</li> </ul>
<b>Penalties 7.18</b>	<ul style="list-style-type: none"> <li>Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for breach of its customs laws, regulations, or procedural requirements, including those governing tariff classification, customs valuation, transit procedures, country of origin, or claims for preferential treatment. Each Party shall ensure that such measures are administered in a uniform manner throughout its territory.</li> <li>Each Party shall ensure that a penalty imposed by its customs administration for a breach of its customs laws, regulations, or procedural requirements is imposed only on the person legally responsible for the breach.</li> <li>Each Party shall ensure that any penalty imposed by its customs administration for breach of its customs laws, regulations, or procedural requirements depends on the facts and circumstances of the case, including any previous breaches by the person receiving the penalty, and be commensurate with the degree and severity of the breach.</li> <li>Each Party shall provide that a clerical or minor error in a customs transaction, as set forth in its laws, regulations or procedures, published in accordance with Article 7.2 (Online Publication), shall not be treated as a breach of customs laws, regulations, or procedural requirements, and may be corrected without assessment of a penalty, unless the error is part of a consistent pattern of such errors by that person.</li> </ul>	<ul style="list-style-type: none"> <li>Not specified.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Each Party shall adopt or maintain measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.</li> <li>• Each Party shall ensure that when its customs administration imposes a penalty for a breach of its customs laws, regulations, or procedural requirements, it provides an explanation in writing to the person on whom the penalty is imposed, specifying the nature of the breach, including the specific law, regulation, or procedural requirement concerned, and the basis for determining the penalty amount if not set forth specifically in the law, regulation, or procedural requirement.</li> <li>• Each Party shall provide that a person may correct an error in a customs transaction that is a potential breach of a customs law, regulation, or procedural requirement, excluding fraud, prior to the discovery of the error by the Party, if the person does so in accordance with the Party's laws, regulations, or procedures, and pays any owed customs duties, taxes, fees, and charges, including interest. The correction shall include the identification of the transaction and circumstances of the error. The Party shall not use this error to assess a penalty for a breach of a customs law, regulation, or procedural requirement.</li> <li>• Each Party shall specify a fixed, finite period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, or procedural requirement.</li> </ul>	