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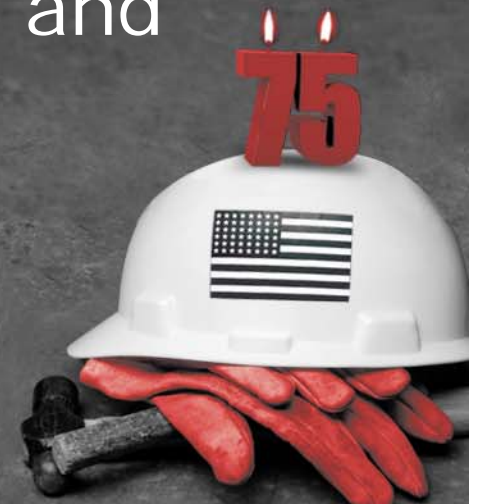
Using NAFTA to Maximize Duty Savings

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Areas for Discussion

- NAFTA Trade Agreement
- Protecting your company's duty savings under NAFTA
 - NAFTA Rules of Origin
 - General Importing Requirements
- Understanding the consequences of getting the NAFTA rules of origin and importing requirements wrong
 - NAFTA Audits
- Interplay of FTZ and NAFTA



NAFTA TRADE AGREEMENT



Trade Agreement

- Trade Agreement – provide qualifying raw material and finished goods with a preferential duty rate (trade elimination or reduction)
- Proper origin and certification requirements, which vary according to each agreement, must be fulfilled in order to make a preferential duty claim



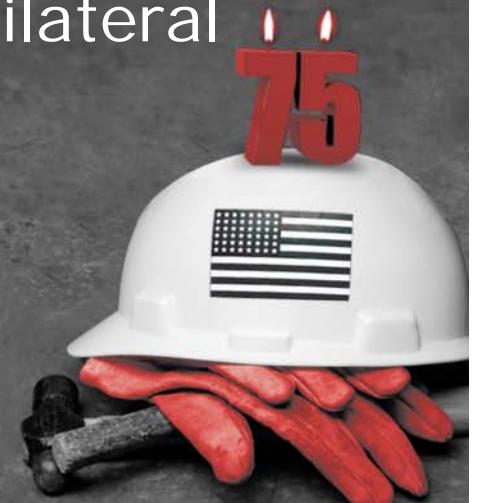
Why use Preferential Trade Agreements

- Open up foreign markets
- Lower/eliminate tariffs
- Increase trade between countries
- Increase competitiveness
- Open foreign government procurement
- Services/investment
- US may incorporate labor, environmental, intellectual property, investment, government procurement and port security provisions



NAFTA

- In force since January 1, 1994
- Objectives:
 - Eliminate trade barriers and facilitate the circulation of goods and services
 - Promote conditions for fair competition
 - Promote investment opportunities
 - Protect intellectual property rights
 - Create procedures for the implementation and compliance of the treaty
 - Establish guidelines for subsequent trilateral cooperation

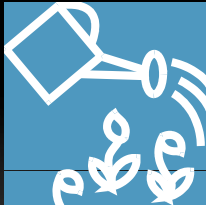


Protecting your company's duty savings under NAFTA

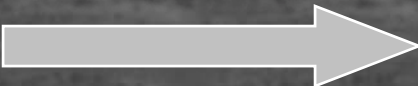


NAFTA Rules of Origin

Wholly Obtained



Tariff Shift



Regional Value Content



NAFTA Rules of Origin Preference Criteria "A"

The good is wholly obtained or produced entirely in the territory of one or more of the Parties as defined in Article 415

A) Minerals

B) Vegetable Goods

C) Live Animals

D) Goods taken from
outer space, among others

E) Goods produced in the territory of the Parties exclusively
from goods referred to as in this Article, or from
their derivatives.

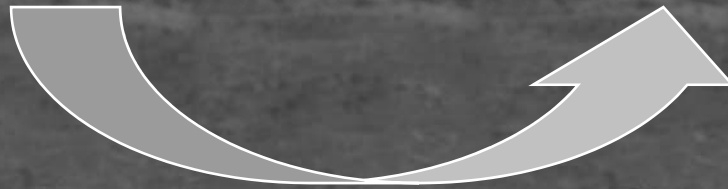


NAFTA Rules of Origin Preference Criteria "B"

Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification or the good otherwise satisfies the applicable requirements of Annex 401 (specific rules of origin)

Paper from Brazil
(4810.13)

Address Book
(4820.10)



Rule of origin for Address Book:

A change to 4817 through 4823 from any other heading outside that group



NAFTA Rules of Origin Preference Criteria "B" (can't.)

Tariff Shift

- Rules of Origin specifically define what change in tariff classification must occur
- All components must comply with the change in tariff (except for "De Minimis")



NAFTA Rules of Origin Preference Criteria "B" (can't.)

Regional Value Content - RVC

- Certain percentage of the good must originate in North America
 - 60% Transaction Value (Price Paid or Payable; or
 - 50% Net Cost (Actual Cost of the good)
- Formula that excludes value of non-originating materials



NAFTA Rules of Origin Preference Criteria "C"

The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials

Meet Tariff Shift - Becomes MX Origin

Provides NAFTA COO to Importer

1. Tree from Brazil, cut and made into pulp.
2. Pulp sent to Mexico, milled into paper.
3. Paper sent to U.S., made into address book.



NAFTA Rules of Origin Preference Criteria "D"

Unassembled / Disassembled or "Parts" in the Same Heading

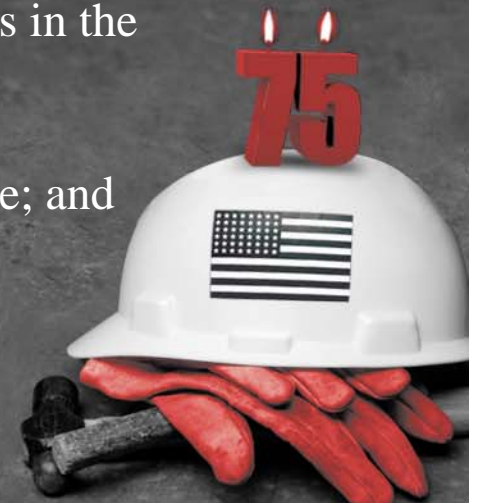
- Exception to first three preference criteria. Good may still qualify for NAFTA preference if:

Produced entirely in the territory;

✦ Non-originating materials do not undergo a tariff shift because they were imported unassembled / disassembled and classified as the assembled good, or were classified as "parts in the same heading" as the good;

✦ Regional value content is either 50% or 60% of good's value; and

✦ Satisfies all other applicable requirements



NAFTA Rules of Origin Preference Criteria “E”

Automatic Data Processing Goods

- Certain ADP (automatic data processing) goods and their parts (see Annex 308.1 of NAFTA text)

- ★ These goods will “originate” - regardless of country of manufacture - when:
 1. MFN duty rates MX-CA-US are the same, and
 2. Duty is paid upon entry to the NAFTA territory



NAFTA Rules of Origin Supplemental Origin Options

- De Minimis
- Intermediate Materials
- Accumulation
- Fungible Goods and Materials



NAFTA Customs Procedures

- To import NAFTA originating goods, the importer must meet the following general requirements:
 - Submit the import entry with a written declaration stating that the good qualifies as originating
 - Such declaration should include the country of origin code assigned by NAFTA's Marking Regulations, in order to determine the applicable NAFTA duty rate
 - Possess the original (Mexico only) or copy of the NAFTA Certificate of Origin, at the time the customs entry is submitted
 - Turn in a copy of the NAFTA certificate to the customs broker
 - Upon request of the authority, turn in the Certificate of Origin
 - When it is believed that a Certificate of Origin contains incorrect information, a corrected entry must be submitted and the omitted dues, if any, paid



NAFTA Certification - Who Signs It?

- Exporter (must sign it)
 - Knowledge
 - Written declaration
 - Certificate provided by producer
- Producer (may sign or provide back up certificate)



NAFTA Certificate of Origin (Form)

NORTH AMERICAN FREE TRADE AGREEMENT CERTIFICATE OF ORIGIN	
Please print or type	19 CFR 181.11, 181.22
1. EXPORTER NAME AND ADDRESS	2. BLANKET PERIOD (DD/MM/YY)
	FROM
	TO
TAX IDENTIFICATION NUMBER	
3. PRODUCER NAME AND ADDRESS	4. IMPORTER NAME AND ADDRESS
TAX IDENTIFICATION NUMBER:	TAX IDENTIFICATION NUMBER



NAFTA Certificate of Origin (Cont'd)

I CERTIFY THAT:			
* THE INFORMATION OF THIS DOCUMENT IS TRUE AND ACCURATE AND I ASSUME THE RESPONSIBILITY FOR PROVING SUCH REPRESENTATIONS. I UNDERSTAND THAT I AM LIABLE FOR ANY FALSE STATEMENTS OF MATERIAL OMISSIONS MADE OR IN CONNECTION WITH THIS DOCUMENT;			
* I AGREE TO MAINTAIN, AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM, IN WRITING, ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE;			
* THE GOODS ORIGINATED IN THE TERRITORY OF ONE OR MORE OF THE PARTIES, AND COMPLY WITH THE ORIGIN REQUIREMENTS SPECIFIED FOR THOSE GOODS IN THE NORTH AMERICAN FREE TRADE AGREEMENT, AND UNLESS SPECIFICALLY EXEMPTED IN ARTICLE 411 OF ANNEX 401. THERE HAS BEEN NO FURTHER PRODUCTION OR ANY OTHER OPERATION OUTSIDE THE TERRITORIES OF THE PARTIES; AND			
* THIS CERTIFICATE CONSISTS OF		<input type="text"/>	PAGES, INCLUDING ALL ATTACHMENTS.
11.	11a. AUTHORIZED SIGNATURE	11b. COMPANY	
	11c. NAME (Print or type)	11d. TITLE	
	11e. DATE (DD/MM/YY)	11f. TELEPHONE (Voice)	(Facsimile)
			Customs Form 434 (121793)



NAFTA Customs Procedures Exceptions

- Originating goods may be imported without a NAFTA Certificate of Origin, under the following circumstances:
 - When the value of an imported good is
 - Less than US\$1,000 (Mexico), CAD\$1,600 (Canada) (US\$1,213 approx.), US\$2,500; and
 - The good is not part of a series of importations with the intent to avoid NAFTA's certification requirements
 - When such originating goods are imported for commercial purposes, a written declaration must be submitted with the invoice, stating, under oath, that the good originates in North America. The declaration may be signed by the exporter, producer, or the importer.
 - When a commercial sample with insignificant value is being imported
 - Samples whose value does not exceed a specific value (US\$1.00); or
 - Which are marked, torn, perforated, or treated in such a way that the item can not be sold or used for non-sample purposes



Certification Responsibilities - Leading Practices

- Review certificates or declarations of origin for accuracy and completeness
- Periodic testing of records to ensure compliance is maintained
- Periodically check with suppliers that sourcing has not changed
- Immediately report any errors found on certification documentation



NAFTA Customs Procedures - Advance Rulings

- Importers, exporters, and producers of goods may obtain advance rulings from the customs administration of any NAFTA territory
- Rulings cover application of NAFTA to future importation of goods
- Rulings are binding, and apply to importations covered by the ruling beginning on the issuance date of the ruling or on such later date specified by the ruling



NAFTA Customs Procedures - Restrictions

- Drawback & Duty Deferral Programs
 - Impact on Temporary Importation Programs (Maquilas)
 - Options
 - Prosec
 - FTAs
- Transshipment
 - Direct Shipment requirements
 - Exceptions
 - No transformation
 - Kept under Customs control



**Understanding the consequences of
getting the NAFTA rules of origin and
importing requirements wrong**



NAFTA Audits

- WHY?
 - To determine the validity of a NAFTA claim
- Who?
 - The Customs Authority of the importer's country
- Where?
 - In its own territory and even in the exporter's territory
- How?
 - Through written questionnaires, letters and verification visits



NAFTA Audits – New Round of Mexican Audits

- Started in December 2008
- Targeting 4 industries:
 - Coffee
 - Pharmaceuticals
 - Chemicals
 - Automotive
- Targets
 - Any Mexican importer claiming a preference
 - Any US or Canadian exporter who signed a certificate
 - Any US or Canadian producer whose good was exported with a certificate



What is Audited?

- Importer and Exporter obligations which entitle the import of goods into Mexico at a preferential rate of duty
- Importer obligations
 - Possession of a NAFTA certificate of origin, signed by the exporter, stating that the imported goods qualify as NAFTA originating
 - The NAFTA certificate is complete, information matches import documentation, and appears accurate on its face
 - Evidence that the goods were not “transshipped” outside of the NAFTA territories
- Exporter obligations
 - Copies of the NAFTA certificates provided to importers
 - Documentation supporting the determination that products meet the NAFTA rules of origin



NAFTA Audits - Verification

- First Stage – Verification Request
 - Request importers to submit information for a specified period of NAFTA imports (up to 5 years)
 - Notification of verification (via visit, questionnaire or letter) to exporters and producers abroad.
 - Requests for rescheduling a verification visit are usually granted, 30 days to respond
 - Questionnaire/letter response or on-site review



NAFTA Audits - Verification (Cont'd)

- Second Stage – Verification Outcome
 - Intention to deny preferential treatment
 - May give exporter or producer 30 days to provide additional information
 - Confirmation that goods do not qualify as originating
 - Appeal for reversal
 - Definite resolution denying preferential treatment



NAFTA Audits - Verification (Cont'd)

- Third Stage –Sanctions
 - Suspension of preferential treatment to exporter
 - Denial of preferential treatment to importer
 - 20 days to contest customs decision
 - Final determination establishing tax liability for omitted duties and imposing penalties to importer



How to Prepare

Importers

- Review certificates for completeness and accuracy
- Ask exporters to replace defective certificates
- For goods which would be subject to ADD if produced elsewhere, obtain additional, non-preferential, certificate of origin

Exporters/Producers

- Verify availability and sufficiency of supporting information
 - If gaps are discovered, fill them
 - If errors are discovered, provide corrected certificates to importers
- Review certification process
 - Vendor information
 - RVC calculations
 - BOM information
 - Accounting methods



NAFTA Audits - Recordkeeping

- Exporter/Producer
 - 5 years
 - Purchase of, cost of, value of, and payment for good and materials
 - Production of good in final form
- Importer
 - 5 years
 - Certificate of Origin
 - Other relevant documents



Foreign Trade Zones & NAFTA



FTZ Interplay with NAFTA

FTZ rules should not be viewed in isolation

- FTZ feasibility studies must consider the interplay between FTZ benefits and trade agreements relevant to the importing/exporting activity at hand.
- Trade agreements can create FTZ limitations or may produce better results without U.S. FTZ operations.



FTZ Interplay with Free Trade Agreements

- Using a FTZ can strengthen and or limit trade agreements or other strategies
- FTZ Interplay – NAFTA
 - NAFTA - Article 303 duty-deferral rules
 - a good imported into a NAFTA country duty deferral program (FTZ)
 - Good undergoes manufacturing in a FTZ and finished good is subsequently exported to another NAFTA country. In this scenario, duty waived or reduced in an amount not exceeding the lesser of the total amount payable on the good in the NAFTA country or total amount of duty paid in the second NAFTA country
 - In a distribution scenario, the imported product enters the FTZ and is then exported to NAFTA county. The company would benefit from duty avoidance by not having to pay US duty on the imported product
 - Duty-free products can be entered then exported to avoid NAFTA 303 problem

