

U.S.- CAFTA-DR FREE TRADE AGREEMENT

Documenting Origin

How to Declare That A Good Is Originating

The Central America and Dominican Republic Free Trade Agreement (CAFTA-DR) designates the importer with the responsibility of claiming preferential treatment under the Agreement. The exact manner that such a claim will be made will be determined by the individual signatory countries. This Agreement does not require that the importer provide a certification in support of the claim of preference unless requested by the customs authority. More specific information will be added here when it becomes available.

The importer should work with the U.S. exporter to ensure that a U.S. good meets the relevant rule of origin under the CAFTA-DR prior to making a claim.

Claim for Preferential Tariff Treatment

The importer may make a claim for preferential tariff treatment based on either:

- (a) a written or electronic certification by the importer, exporter, or producer. (Electronic certification is to be available for products entering the Central American countries and the Dominican Republic no later than three years after the date of entry into force of this Agreement.)
- (b) the importer's knowledge that the good is originating, including reasonable reliance on information in the importer's possession that the good is originating. (The Agreement states that the Central American countries and the Dominican Republic shall implement this subparagraph no later than three years after the date of entry into force of this Agreement)

Demonstrating Eligibility for Preferential Tariff Treatment

In general, a product's eligibility for preferential tariff treatment may be demonstrated in a variety of ways provided it is in written or electronic form, for instance: a statement on company letterhead, a statement on a commercial invoice, or a certification. While no official form is required in order to demonstrate eligibility for preferential tariff treatment under the CAFTA-DR, there is a required list of elements that need to be included.

A certification should include the following information:

- (a) the name of the certifying person, including, as necessary, contact or other identifying information;
- (b) tariff classification under the Harmonized System and the description of the good;
- (c) information demonstrating that the good is originating;
- (d) date of the certification; and
- (e) in the case of blanket period certification, the time period over which the certification is applicable.

It is the responsibility of the importer to claim preferential treatment for a given shipment at the time that the good is cleared through the customs authority.

Despite the fact that the ultimate responsibility for claiming preferential treatment lies with the importer, information needed to support the claim for preferential treatment may need to be provided by the producer. The certification that the goods are originating may be produced by the exporter, importer, or

producer of the goods. If someone other than the producer (i.e., the exporter or importer) issues the certification, it must be based upon either 1) reasonable reliance on a written or electronic certification that the good is originating issued by the producer or 2) the issuer's knowledge that the good is originating, which may include intimate knowledge of the product, its manufacture, and its components. In other words, the importer may be heavily dependent upon the assistance and cooperation of U.S. suppliers in producing accurate and well-documented claims for preferential treatment.

A sample certification for exports to El Salvador, Guatemala, Honduras, and Nicaragua is available for viewing, as well as an unofficial English translation of the accompanying instructions.

Supporting Documentation

An exporter or producer who issued a certification is required to have it available, in addition to other supporting documentation used in demonstrating that the good qualifies as originating under the CAFTA-DR rules of origin, for a minimum of five years from the date the certification was issued.

An importer claiming preferential treatment for a good must maintain all records and documents necessary to demonstrate the good qualified for preferential treatment at the time of importation for a minimum of five years.

Filing A Correction (Exporter's Obligations)

After an exporter/producer issues a certification (whether to the importer or the customs authority), it may come to the attention of one of the parties to a transaction that the certification was based on incorrect information or that the certification contains some type of error. In the case where the certification was issued by an exporter or producer, it is the responsibility of the exporter or producer of the certification to immediately notify, in writing, every person to whom it provided the certification of any change that could affect its accuracy or validity. While unpaid duties will have to be paid to the customs authority if a good no longer qualifies as originating, penalties may not be imposed by the customs authority if such action is taken by the issuer of the certification.

Special Cases

In some cases, a considerable amount of research into the inputs required for the production of goods is necessary in order to determine origin. Many exporters and importers believe that the only time that the claim for preferential treatment can be made is at the time the shipment clears customs, creating a sense of urgency in determining the origin of the goods. To obtain the reduced duty rate immediately, this is true. The importer, however, has another option. The importer may pay the non-preferential duties at the time the goods clear customs and then has up to one year from the date on which the goods were imported to make a claim for preferential treatment and apply for a refund of excess duties paid as a result of the good not being accorded preferential tariff treatment. This may happen in cases where the information required to determine that the good is originating is not available at the time of shipment. At the time of the claim for preferential treatment and application for refund is made, the importer is required to supply a written declaration stating the good was originating at the time of importation. As with other claims for preferential treatment, additional supporting information may need to be provided upon request of the Customs authorities.

In some situations, an exporter may find that multiple shipments of identical goods are being sent to the same CAFTA-DR importer. In these cases, it is not necessary to create new written or electronic certifications for each individual shipment. The importer may maintain one such "blanket" certification to be presented to the customs authority, if requested. The "blanket period" may not exceed a period of one year.

*Prepared by the International Trade Administration
Trade Information Center*