NAFTA: 5 MINUTE ADVISOR

The North American Free Trade Agreement (NAFTA) has been in effect since January 1, 1994. This is a general overview of the important trade provisions of the agreement.

While the Agreement promises more open trade and procedural simplicity, this agreement is more convoluted than the US-Canada Free Trade Agreement in that virtually every paragraph dealing with trade in goods involves a cross-reference and/or an exception. NAFTA provides for tariff reductions on "a good" that originates or is deemed to originate in the U.S., Canada, or Mexico - or is a product created by processing in more than one NAFTA country. The ability to accumulate value from multiple member countries is similar to the treatment under the Caribbean Basin Initiative (CBI).

The goods covered by each category vary by country. There are also numerous exceptions relating to textile products, set forth in Annex 300-B to the Agreement.

ORIGIN DETERMINATION
In order to qualify for preferential treatment under NAFTA, the goods must qualify as "originating goods". Article 401. There are essentially four ways for goods to qualify as originating goods. See the HTS General note 12T for specific changes.

1 The goods are entirely the growth or product of one party, e.g. fruits, trees, minerals, etc.
2 The goods are produced in a NAFTA country entirely from goods which were entirely the growth or product of one or more NAFTA countries, e.g. jam made from originating fruit, or furniture made form originating wood.
3 If the goods were produced in a NAFTA country, but contain non-originating materials or parts, the non-originating material must undergo one of the transformations enumerated in "Annex 401" to the Agreement.
4 Even if the goods were produced in a NAFTA country, but contain non-originating materials and fail all of the enumerated transformation because the classification involved parts that did not undergo a change in classification as a result of the way in which the Harmonized System operates, the goods may nonetheless qualify as originating, based upon the addition of regional value content: 60% of the transaction value or 50% of net costs. (This option does not apply to Textiles Articles or Wearing Apparel for which special rules apply relating to fiber forward and yarn forward origin requirements, dependent upon the textile of apparel involved.)

REGIONAL CONTENT VALUE
There are two methods for calculating regional content value: Transaction **Value** or **Net Cost**. Transaction value will be used most frequently. Net Cost is generally used when there is no transaction value, where there are related parties, and in the automotive sector. The presence of a de minimis amount of non-originating content (7%) will not in and of itself defeat a finding that the goods were produced wholly or originating materials.

SUBSEQUENT PROCESSING PROHIBITED
Processing of an originating good after export from a NAFTA country, but before entry into another NAFTA country, is prohibited and will result in the previously originating product being treated as non-originating. Only unloading, reloading, actions necessary to preserve the shipment or transporting the goods to the territory of a NAFTA country are permitted in non-NAFTA countries.

CERTIFICATE OF ORIGIN REQUIRED
A certificate or origin is required to be in the possession of the importer in order to make a claim for preferential treatment. The Certificate of Origin is normally prepared for any exportation of goods for which an importer may claim preferential tariff treatment on importation of the good into the territory of another Party. The Certificate of Origin is normally prepared, completed and signed by the exporter. Under some circumstances, the Producer may provide the Certificate of Origin. When the exporter is not the producer of the goods, the exporter may nonetheless complete and sign a Certificate on the basis of:

A. Its knowledge of whether the goods qualify as an originating good

B. Its reasonable reliance on the producer's written representation that the goods qualify as an originating good, or

C. A completed and signed Certificate for the goods voluntarily provided to the exporter by the producer.

The exporter, as well as the importer, is required to maintain records sufficient to prove the origin and to provide a copy of the certificate to its Customs Service upon request.

CERTIFICATE OF ORIGIN NOT REQUIRED
Although a declaration that the goods qualify as originating goods will still be required, a Certificate of Origin will not be required for the importation of commercial and noncommercial importation of goods whose value does not exceed US$1,000.

ERRORS IN THE CERTIFICATE
An exporter who, subsequent to the issuance of a certificate of origin, finds the certificate to be inaccurate is required to notify the importer of the errors. The issuer of a false certificate can be penalized. There is no exporter liability, however, if the issuer notifies the importer of the errors and issues a corrected certificate.

CLAIM FOR PREFERENTIAL TREATMENT
At the time of entry: In order to make entry with a claim for preferential treatment that the importer must possess at least a copy of the certificate. The certificate does not have to be filed at the time of entry.

After entry: A claim for preferential treatment can be made up to one year after the date of importation.

IMPORTER RESPONSIBILITY
The importer is responsible for declarations made when entering goods. Possession of a Certificate of Origin establishing that the goods qualify for preferential treatment is part of the required declaration. False declarations may be penalized, but the importer will not be penalized if it voluntarily corrects a misdeclaration resulting either form its own actions or from those of the exporter.

RECORD KEEPING
Under both the NAFTA and Customs Regulations generally the importer is required to maintain records supporting the declarations made in its entry, including a copy of the Certificate or Origin. Upon request, a copy of the Certificate of Origin must be provided to Customs.

VERIFICATION OF ORIGIN
NAFTA provides that the Customs Service of the importing country may request from an exporter information substantiating the origin of any goods. Moreover, the Agreement also provides a procedure whereby the importing country's Customs Service may visit the exporter to obtain the necessary verification.

PENALTIES
Both NAFTA and the Customs regulations provide for civil and criminal penalties for false declarations, either in the issuance of a Certificate of Origin or in its use on importation.

DRAWBACK
Drawback on non-NAFTA country materials and components incorporated into a product qualifying for NAFTA benefits and exported to another NAFTA country is strictly limited.

ADVANCED RULINGS
NAFTA provides a specific procedure for obtaining binding rulings from each country as to whether particular goods and operations qualify under the agreement. Rulings take up to 120 days and will be shared among the Customs services.

RELATIONS WITH OTHER TRADE PROGRAMS
Mexico will no longer be eligible for GSP benefits. NAFTA does not affect scheduled duty reductions under the U.S. - Canada Free Trade Agreement.