



NAFTA – BASIC PRINCIPLES

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

ORIGIN DETERMINATION

In order to qualify for preferential treatment under NAFTA, the goods must qualify as "originating goods." There are essentially four ways for goods to qualify as originating goods. (HTS General Note 12)

1. The goods are entirely the growth or product of a NAFTA country (e.g. fruits, trees, minerals, etc.).
2. If the goods were produced in a NAFTA country, but contain non-originating materials or parts, the non-originating material must undergo a change in tariff classification or meet the Regional Content Value calculations as described in Note 12 (r), (s), and (t).
3. 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 from originating wood).
4. Goods produced in a NAFTA country, but that contain non-originating materials because the classification involved "parts" or "unassembled/disassembled" goods that did not undergo a change in classification, the goods may nonetheless qualify as originating, based upon the addition of Regional Value Content (RVC): 60% of the transaction value or 50% of net costs.
 - a. 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.

REGIONAL CONTENT VALUE

There are two methods for calculating regional content value: Transaction Value (TV) or Net Cost (NC). Transaction value is most frequently used. 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 nonoriginating content (7%) will not in and of itself defeat a finding that the goods were produced wholly or originating materials. (General Note 12 (c)).



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.

CERTIFICATE OF ORIGIN

In most cases, a certificate of 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, 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 of Origin certifying the following:

PREFERNECE CRITERION (FIELD 7)

- Wholly Obtained or Produced
- Good is produced in NAFTA territory and satisfies the specific rule of origin (GN12 (t)) – Tariff Shift or RVC
- Produced in the NAFTA territory exclusively from originating materials
- Unassembled or Disassembled goods or parts that originate based on applied RCV
- Certain automatic data processing goods and their parts from the territory of a NAFTA country
- Certain agricultural goods not subject to quantitative restrictions

PRODUCER (FIELD 8)

- YES - The Exporter is the Producer of the listed product
- NO (1) - The Exporter has "knowledge" of whether the goods qualify as an originating good
- NO (2) - The Exporter has reasonable reliance on the producer's "written representation" that the goods qualify as an originating good
- NO (3) - The Exporter has received a completed and signed "Certificate of Origin" for the goods voluntarily provided to the exporter by the producer.

NET COST (FIELD 8)

- NC- Where the good is subject to Regional Value Content (RVC) and is calculated using Net Cost
- NO- Where Net Cost is not used, or the good is not subject to RVC



CERTIFICATE OF ORIGIN NOT REQUIRED

NAFTA certificates are not required when shipping items which are of low value. (However, you must maintain the same level of compliance as you would with a NAFTA 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 from 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 of Origin. Upon request, a copy of the Certificate of Origin must be provided to Customs. 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.

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.

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.