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NAFTA: A Guide to Customs Procedures

This guide was designed to only provide general information on the North American Free Trade Agreement. Detailed information and advance rulings should be obtained from the sources listed in chapter 15 of this guide, particularly from the customs administration of each NAFTA country.

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Preface

On December 17, 1992, Prime Minister Brian Mulroney in Ottawa, President Carlos Salinas de Gortari in Mexico City and President George Bush in Washington, D.C. signed the North American Free Trade Agreement (NAFTA). These three ceremonies marked the end of a process that began on February 5, 1991 when the three leaders announced they would negotiate the NAFTA.

This guide was written with input from the Governments of Canada and Mexico and concentrates on explaining Chapters 4 and 5 of the NAFTA, where the rules of origin and procedural obligations relating to customs administration are described. We have also provided sources of further information in the three countries. We hope it gives importers, exporters and manufacturers an overview of the benefits and requirements of the Agreement.

As a result of the successful conclusion of these negotiations the NAFTA entered into force on January 1, 1994. One of the main results of the Agreement is the elimination of tariffs between Canada, Mexico and the United States on nearly all qualifying goods by the year 2003. Chapter 5 of the Agreement attempts to ensure that customs procedures will facilitate trade flows as much as possible.

Raymond Kelly

Commissioner of Customs

August 1998

Chapter 1 - Description of the NAFTA

Objectives

The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

- eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
- promote conditions of fair competition in the free trade area;
- increase substantially investment opportunities in the territories of the Parties;
- provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
- create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes;
- establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

Tariff Phaseout

The NAFTA eliminates tariffs on most goods originating in Canada, Mexico and the United States over a maximum transition period of fifteen years. The schedule to eliminate tariffs already established in the Canada-United States Free Trade Agreement will continue as planned so that all Canada-United States trade is duty-free in 1998. For most Mexico-United States and Canada-Mexico trade, the NAFTA will either eliminate existing customs duties immediately or phase them out in five to ten years. On a few sensitive items, the Agreement will phase out tariffs over fifteen years. NAFTA-member countries have agreed to a faster phaseout of tariffs on certain goods.

During the transition period, rates of duty will vary depending upon in which NAFTA country the goods were produced. That is, the NAFTA may grant a Canadian good entering the United States a different NAFTA rate than the same Mexican good entering the United States. For most goods imported into Canada, there will be three NAFTA rates; the rate depends on whether the goods are of U.S. origin, Mexican origin or produced jointly with U.S. and Mexican inputs. To know which rate of duty applies, traders must first establish that the goods meet the NAFTA rules of origin and then use the tariff rules found in Annex 302.2 of the NAFTA.

Generally, tariffs will only be eliminated on goods that "originate" as defined in Article 401 of the NAFTA. That is, transshipping goods made in, say Guatemala, through Mexico will not entitle them to preferential NAFTA duty rates. The NAFTA does provide for reduced duties on some goods of Canada, Mexico, and the United States that do not originate but that meet specified conditions. For example, limited quantities of goods that are non-originating may be eligible for preferential NAFTA treatment under special tariff-rate quotas.

The NAFTA creates a free trade area, not a common market. Customs administrations will still exist and goods entering Canada, Mexico or the United States must still comply with each country's laws and regulations. The NAFTA does not allow for the unchecked movement of goods among Canada, Mexico and the United States.

Chapter 2 - Rules of Origin

Purpose

The NAFTA grants benefits to a variety of goods from the region. Maximum benefits are reserved for those goods that "originate" in the region. "Originating" is a term of art used to describe those goods that meet the requirements of Article 401 of the Agreement. Article 401 of the Agreement establishes which goods originate and precludes goods from other countries from obtaining those benefits by merely passing through Canada, Mexico or the United States. Thus, not all goods made in Canada, Mexico and the United States qualify for NAFTA benefits. Traders must carefully research the terms of the Agreement to determine whether their goods are entitled to NAFTA benefits--they should not assume that they are entitled to NAFTA benefits merely because they were made in a NAFTA country. It is possible, for instance, for goods not to originate in Canada, Mexico or the United States as that term is defined in the NAFTA, but still be an article of Canada, Mexico or the United States for country of origin marking, statistical or other purposes.

Article 401 of the Agreement defines "originating" in four ways: goods wholly obtained or produced in the NAFTA region; goods meeting the Annex 401 origin rule; goods produced in the NAFTA region wholly from originating materials; and unassembled goods and goods classified with their parts which do not met the Annex 401 rule of origin but contain 60 percent regional value content using the transaction method (50 percent using the net cost method).

Wholly Obtained or Produced

Goods wholly obtained or produced entirely in Canada, Mexico or the United States contain no foreign materials or parts from outside the NAFTA territory. Article 415 defines goods wholly produced in the NAFTA region as:

a. mineral goods extracted in Canada, Mexico or the United States; Silver mined in Mexico is originating because it is extracted in the territory of one of the Parties.

b. vegetable goods, as such goods are defined in the Harmonized System, harvested in Canada, Mexico or the United States; Wheat grown in Canada is originating because it is harvested in the territory of one of the Parties.

c. live animals born and raised in Canada, Mexico or the United States;

d. goods obtained from hunting, trapping or fishing in Canada, Mexico or the United States;

e. goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with Canada, Mexico or the United States and flying its flag;

f. goods produced on board factory ships from the goods referred to in subparagraph

g. provided such factory ships are registered or recorded with that country and fly its flag;

h. goods taken from outer space, provided they are obtained by Canada, Mexico or the United States or by a person of these countries and not processed in a non-NAFTA country;

i. waste and scrap derived from

- production in Canada, Mexico and/or the United States, or

* Copper wire recovered in Canada from scrap telephone or electrical wires is wholly obtained or produced in Canada regardless of where it was originally produced.

- used goods collected in Canada, Mexico and/or the United States, provided such goods are fit only for the recovery of raw materials; and,

* Silver jewelry made in the United States from silver mined in Mexico is wholly obtained or produced in the NAFTA territory because it is made exclusively of a mineral good extracted in Mexico.

j. goods produced in Canada, Mexico or the United States exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production.

Meets Annex 401 Origin Criterion

Article 401(b) indicates that goods may "originate" in Canada, Mexico or the United States, even if they contain non-originating materials, if the materials satisfy the rule of origin specified in Annex 401 of the Agreement. The Annex 401 rules of origin are commonly referred to as specific rules of origin and are based on a change in tariff classification, a regional value-content requirement or both. Annex 401 is organized by Harmonized Tariff Schedule (HTS) number, so one must know the HTS number of a good, and the HTS numbers of all the non-NAFTA materials used to produce the good, to find its specific rule of origin and determine if the rule has been met. Annex 401 gives the applicable rule of origin opposite the HTS number. For up-to-date Annex 401 information, refer to the specific Rules of Origin found in General Note 12 (t) of the Harmonized Tariff Schedule (US), D Memorandum 11-5-2 and any Customs Notices (CA) and the Diario Oficial dated March 27, 1996 and the Decree promulgating the modifications of NAFTA's Annex 401 published in the Diario Oficial dated March 27, 1996 (MX).

Tariff Change

When a rule of origin is based on a change in tariff classification, each of the non-originating materials used in the production of the goods must undergo the applicable change as a result of production occurring entirely in the NAFTA region. This means that the non-originating materials are classified under one tariff provision prior to processing and classified under another upon completion of processing. The specific rule of origin in Annex 401 defines exactly what change in tariff classification must occur for the goods to be considered "originating." (Please see the section on "de minimis" in Chapter 3 of this Guide.)

Frozen pork meat (HTS 02.03) is imported into the United States from Hungary and combined with spices imported from the Caribbean (HTS 09.07-9.10) and cereals grown and produced in the U.S. to make pork sausage (HTS 16.01). The Annex 401 rule of origin for HTS 16.01 states:

A change to heading 16.01 through 16.05 from any other chapter.

Since the imported frozen meat is classified in Chapter 2 and the spices are classified in Chapter 9, these non-originating materials meet the required tariff change. One does not consider whether the cereal meets the applicable tariff change since it is originating--only non-originating materials must undergo the tariff change.

Regional Value Content

Some Annex 401 specific rules of origin require that a good have a minimum regional value content, meaning that a certain percentage of the value of the goods must be from North America. Article 402 gives two formulas for calculating the regional value content. In general, the exporter or producer may choose between these two formulas: the "transaction value" method or the "net cost" method. Having two methods gives producers more than one way of demonstrating that the rule of origin has been satisfied. The transaction value method is generally simpler to use but a producer may choose whichever method is most advantageous.

The transaction value method calculates the value of the non-originating materials as a percentage of the GATT transaction value of the good, which is the total price paid for the good, with certain adjustments for packing and other items, and is based on principles of the GATT Customs Valuation Code. The essence of this method is that the value of non-originating materials can be calculated as a percentage of the invoice price which is usually the price actually paid for them. Because the transaction value method permits the producer to count all of its costs and profit as territorial, the required percentage of regional value content under this method is higher than under the net cost method.

However, there are a number of situations where the transaction value method cannot be used and the net cost method is the only

alternative. The net cost method must be used when there is no transaction value, in some related party transactions, for certain motor vehicles and parts, when a producer is accumulating regional value content (see Chapter 3 for a discussion of accumulation), as well as to determine the regional value content for designated intermediate materials (see Chapter 3). The producer may also revert to the net cost method if the result using the transaction value method is unfavorable.

The formula for calculating the regional value content using the transaction value method is:

RVC = TV -- VNM x 100

TV where

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good.

The net cost method calculates the regional value content as a percentage of the net cost to produce the good. Net cost represents all of the costs incurred by the producer minus expenses for sales promotion (including marketing and after-sales service), royalties, shipping and packing costs and non-allowable interest costs. The percentage content required for the net cost method is lower that the percentage content required under the transaction value method because of the exclusion of certain costs from the net cost calculation.

An electric hair curling iron (HTS 8516.32) is made in Mexico from Japanese hair curler parts (HTS 8516.90). Each hair curling iron is sold for US$4.40; the value of the non-originating hair curler parts is US$1.80. The Annex 401 rule of origin for HTS 8516.32 states:

A change to subheading 8516.32 from subheading 8516.80 or any other heading; or

A change to subheading 8516.32 from subheading 8516.90, whether or not there is also a change from subheading 8516.80 or any other heading, provided there is a regional value content of not less than: (a) 60 percent where the transaction value method is used, or (b) 50 percent where the net cost method is used.

The first of these two rules is not met since there is no heading change, therefore the producer must verify if the curling irons can qualify under the second rule. In the second rule the required subheading change is met (from HTS 8516.90 to 8516.32) so one proceeds to calculate the regional value content. The regional value content under the transaction value method is:

(4.40 -- 1.80) x 100 = 59.1%

4.40

The hair curler is not considered an originating good under this method, since the required regional value content is 60 percent where the transaction value is used.

The formula for calculating the regional value content using the net cost method is:

RVC = NC -- VNM x 100

NC where

RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good.

Instead, the producer uses the net cost method. The total cost to produce the hair curler is US$3.90, which includes US$0.25 for shipping and packing costs. There are no costs for royalties, sales promotion or non-allowable interest. The net cost is therefore US $3.65. The regional value content under the net cost method is:

(3.65-- 1.80) x 100 = 50.7%

3.65

The hair curler would be considered originating, since the required regional value content is 50 percent where the net cost method is used.

Produced in the NAFTA Territory Wholly of Originating Materials

Goods also originate if they are produced entirely in Canada, Mexico and/or the United States exclusively from materials that are considered to be originating according to the terms of the Agreement.

Company A imports whole raw bovine skins (HTS 41.01) into Mexico from Argentina and processes them into finished leather (HTS 41.04). The finished leather is then purchased by Company B to make leather eyeglass cases (HTS 4202.31). The rule of origin for HTS 41.04 states:

A change to heading 41.04 from any other heading, except from heading 41.05 through 41.11.

The finished leather originates in Mexico because it meets the Annex 401 criterion. Assuming the eyeglass cases do not contain any non-originating materials, they originate since they are made wholly of a material that is originating (because the finished leather satisfied the Annex 401 criterion).

Unassembled Goods and Goods Classified with Their Parts

In some cases, a good that has not undergone the required tariff change can still qualify for preferential NAFTA treatment if a regional value-content requirement is met. This NAFTA provision may only be used under two very specific circumstances. However, it may never be used for wearing apparel provided for in Chapters 61 and 62, and textile articles of Chapter 63 of the Harmonized System. The two circumstances where the provision may be used are where goods do not undergo the tariff change required by Annex 401 because:

the goods are imported into Canada, Mexico or the United States in an unassembled or a disassembled form but are classified as assembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

Bicycle kits from Germany are assembled in Canada and sold in the NAFTA territory. The bicycles would qualify as originating goods if the regional value content requirement is met.

the goods are produced using materials imported into a NAFTA country that are provided for as parts according to the Harmonized System, and those parts are classified in the same subheading or undivided heading as the finished goods.

A barber chair and its parts thereof classified in the Harmonized Tariff Schedule under subheading 9402.10.

Chapter 3 - Other Instances to Confer Origin

The four main criteria set out in Chapter 2 of this publication are the basic conditions to confer origin. However, a good that does not meet such requirements may, in some cases, qualify as originating by using additional options described below.

Intermediate Materials

For the purpose of calculating the regional value content of final goods (using either the transaction value method or the net cost method), Article 402(10) allows a producer to designate as an intermediate material any self-produced, originating material used in the production of the final goods. As long as the intermediate material qualifies as an originating material, its entire value may be treated as originating in determining the regional value content of the finished goods.

The purpose of the intermediate material designation is to treat vertically integrated manufacturers more nearly in the same manner as producers who purchase materials from independent suppliers. If you produce your own materials from non-NAFTA inputs, the intermediate materials provision may help your goods to qualify as originating. This provision covers all goods and materials except:

automotive goods defined in Article 403(1) and described in Annex 403.1 and;

components described in Annex 403.2, specifically engines and gearboxes.

An intermediate material is a self-produced material, designated by the producer, that meets the rules of origin of Article 401 and that is incorporated into the final good. Article 415 defines a self-produced material as a material produced by the same party that produced the final goods and which is used in the production of those final goods.

An intermediate material may be composed of originating and non-originating submaterials. After determining that an intermediate material satisfies the applicable rule of origin under Article 401, the total cost to produce that intermediate material is treated as an originating cost. In other words, the producer would not include the value of the non-originating materials used to produce the intermediate material as part of the value of non-originating materials when calculating the regional value content of the final goods. The benefit of designating an intermediate material is that the producer may treat self-produced materials similarly to the way in which he would treat an originating material purchased at arm's length for purposes of determining the value of the non-originating materials of the final goods.

If the intermediate material must satisfy a minimum regional value content to qualify as originating, the net cost method must be used to calculate that regional value content.

A producer may make any number of intermediate material designations provided that no material subject to a regional value-content requirement may be designated as an intermediate material if it contains submaterials also subject to a regional value-content requirement that were also designated as intermediate materials.

Company Z manufacturers forklift trucks in Canada and makes some of the material used in their production. As illustrated in the graphic above, each geometric symbol represents a material. The circles at the top (i.e., outer races, balls, steel, gaskets, impellers, bearings, engine blocks, crank shafts) are materials acquired from sellers in non-NAFTA countries. The squares are self-produced materials (i.e., rod-end bearings, casings, impeller assemblies, engines). They are considered horizontal materials in relation to each other. The impeller assemblies may not be designated as intermediate materials because they do not meet the Annex 401 rule of origin

("A change to subheading 8413.91 from any other heading"). However, the rod-end bearings, casings and engines could all be designated intermediate materials provided they satisfy the applicable Annex 401 rules of origin (the casings undoubtedly meet the rule of origin, which provides for "a change to subheading 8412.90 from any other heading"). The engines and rod-end bearings meet the required tariff change prescribed in the Annex 401 rules of origin but would also have to meet a regional value-content requirement to qualify as originating.

The rod-end bearings and casings are used in the production of the cylinders. Likewise, the impeller assemblies and engines are used in the production of the pumps that drive the hydraulic mechanisms of the forklifts. The cylinders and pumps (represented by triangles) are intermediate materials that are horizontal in relation to each other and vertical in relation to the materials from which they were made. As long as there is no regional value-content requirement for more than one intermediate material in the vertical stream, each new material may be designated as an intermediate material.

The cylinders originate because the rod-end bearings meet the required tariff shift ("A change to heading 8412.10 through 8412.80 from any other heading") and the casings are originating (and therefore are not required to undergo the prescribed tariff change). Thus, Company Z may choose to designate both the rod-end bearings and the cylinders as intermediate materials because only one of them is subject to a regional value-content requirement.

The engines and pumps, however, are both subject to regional value-content requirements and therefore Company Z must choose which is most advantageous: to designate the engines as an intermediate material or to designate the pumps.

Where a single producer designates intermediate materials that qualify as originating solely based on a tariff change, that is, without having to satisfy a regional value-content requirement, subsequent designations can be made with previously designated intermediate materials. Thus, in the example above, if the engine were not subject to a regional value-content requirement, both it and the pump could be designated as intermediate materials.

There are two methods for determining the value of an intermediate material:

the total cost incurred with respect to all goods produced that can be reasonably allocated to that intermediate material; or

the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.

The two methods allow producers to select the one that best fits their production and accounting practices. The value of the intermediate material should be approximately the same using either method. However, the net cost method must be used for intermediate materials subject to a regional value-content requirement. Article 402(8) of the Agreement lists those costs which may not be included when calculating the regional value content of the intermediate material using the net cost method:

sales promotion, including marketing and after-sales service costs;

royalties;

shipping and packing costs;

now-allowable interest costs.

Although these costs are excluded in the net cost calculation, they do form part of the total cost of the material. Accordingly, costs such as royalties are excluded when calculating the net cost for purposes of determining whether the material satisfies a regional value-content requirement (and thus originates and can be designated an intermediate material), but are included in the total value of the material once its origin has been determined. As noted above, the total value of an intermediate material may be counted as an

originating cost.

Accumulation

When producers determine the regional value content of goods, the entire value of the materials used in the production of the goods that they acquire from suppliers is considered as wholly originating or wholly non-originating, as appropriate. The accumulation provision allows the producer or exporter of goods to choose to include as part of the goods' regional value content any regional value added by suppliers of non-originating materials used to produce the final goods. Thus, accumulation allows the producer to reduce the value of the non-originating materials used in the production of the good, by taking into account the NAFTA inputs incorporated into those non-originating materials.

Thus, where a producer finds he is unable to satisfy a regional value-content requirement based on (i) his own processing costs and (ii) the value of originating materials he uses to produce a good, accumulation allows him to include (iii) any regional value added in the NAFTA territory by other persons who produced non-originating materials that were subsequently incorporated into the final good.

The conditions for using accumulation are:

producers/exporters who choose to use accumulation must use the net cost method to calculate any regional value content;

producers/exporters of goods must obtain information on net cost and the regional value content of non-originating materials used to make their goods from the producers (suppliers) of those materials--it will not be obtained by government authorities;

all non-originating materials used in the production of the goods must undergo the tariff classification change set out in Annex 401 of the Agreement, and the goods, must satisfy any applicable regional value-content requirement, entirely in the territory of one or more of the NAFTA countries; and

the goods must satisfy all other applicable requirements of the rules of origin.

Company A imports unfinished bearing rings (HTS 8482.99) into Canada from Japan and further processes them into finished rings (HTS 8482.99.11 in Canada). Since the finished bearing rings contain non-originating materials, they must satisfy the Annex 401 origin criterion to be considered originating. The Annex 401 origin criterion for HTS 8482.99 is:

A change to subheading 8482.91 through 8482.99 from any other heading.

Since the unfinished bearings rings are classified in the same tariff subheading as the finished rings, there is no change in headings. Accordingly, the finished bearing rings cannot be considered originating, even though they contain some regional value content by virtue of the labor and other costs associated with the finishing operations in Canada.

Company A's per unit cost is:

Non-originating (Japanese) materials $0.75

Originating materials 0.15

Labor 0.35

Overhead 0.05

Total cost 1.30

Subsequently, Company A sells the finished rings (HTS 8482.99.11 in Canada) for $1.45 to Company B in the United States, who incorporates the rings into ball bearings (HTS 8482.10). Company B exports the bearings to Mexico and wants to claim NAFTA preferential treatment. The rule of origin for HTS 8482.10 is:

A change to subheading 8482.10 through 8482.80 from any subheading outside that group, except from Canadian tariff item 8482.99.11 or 8482.99.91, U.S. tariff item 8482.99.05, 8482.99.15, 8482.99.25 or Mexican tariff item 8482.99.01 or 8482.99.03; or

A change to subheading 8482.10 through 8482.80 from Canadian tariff item 8482.99.11 or 8482.99.91, U.S. tariff item 8482.99.05, 8482.99.15, 8482.99.25 or Mexican tariff item 8482.99.01 or 8482.99.03, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

60 percent where the transaction value method is used, or

50 percent where the net cost method is used.

The bearings do not meet the tariff change described in the first rule.

They do, however, meet the tariff change described in the second rule and, provided they satisfy one of the two regional value-content requirements, can be considered originating. Company B knows it is short in meeting the regional value content under either method so it decides to accumulate its regional value content with that of Company A. Assuming Company A sold the rings to Company B for $1.45 per unit, and A is willing to disclose to B the regional value content in the finished rings that it sold to B, the following demonstrates the benefits of accumulation:

Without Accumulation

Non-originating ring (A) $1.45

Originating material (B) $0.45

Labor (B) $0.75

Overhead (B) $0.05

Total $2.70

With Accumulation

Non-regional value content of ring (A) $0.75

Regional value content of ring (A) $0.55

Originating material (B) $0.45

Labor (B) $0.75

Overhead (B) $0.05

Total $2.55

The $0.75 represents the value of the non-originating materials, which in this case are the unfinished bearing rings imported into Canada from Japan.

The regional value content, using the net cost method, is:

RVC = NC -- VNM x 100

NC

RVC = regional value content

NC = net cost

VNM = value of non-originating materials

Therefore, the regional value content calculation, with and without accumulation, is:

Without Accumulation With Accumulation

$2.70 -- $1.45 x 100 = 46% $2.55-- $0.75 x 100 = 71%

$2.70 $2.55

Thus, accumulation allows Company B to qualify the bearings as originating by aggregating the regional value content of both Company A and Company B.

De Minimis

Although requiring a change in tariff classification is a very simple principle, it requires that all non-originating materials undergo the required change. A very low percentage of the materials may not undergo the tariff change, thus preventing the goods from originating. Therefore, the Agreement contains a de minimis provision that allows goods to qualify as originating provided such materials are not more than a certain percentage (seven percent in most cases) of the transaction value of the goods adjusted to an FOB basis or, in some cases, of the total cost of the goods.

In addition, where failure of materials to undergo a required change in tariff classification triggers a requirement for a minimum regional value content, the calculation of that content is waived if the value of all non-originating materials used in the production of the goods is not more than the specified de minimis amount.

However, if after application of the de minimis allowance the goods must still meet a regional value-content requirement in order to qualify as originating (that is, if the value of all non-originating materials exceeds the applicable de minimis allowance), the value of all non-originating materials must be taken into account in calculating the regional value content.

A manufacturer purchases inexpensive textile watch straps made in Taiwan (HTS 91.13), to be assembled with originating mechanical watch movements (HTS 91.08) and originating cases (HTS 91.12). The value of the straps is less than seven percent of the transaction value of the final watch (HTS 91.02) adjusted to an FOB basis.

The Annex 401 origin criterion for HTS 91.02 is:

A change to heading 91.01 through 91.07 from any other chapter; or

A change to heading 91.01 through 91.07 from 91.14, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

60 percent where the transaction value method is used, or

50 percent where the net cost method is used.

Only non-originating materials need undergo the required tariff classification change: in this case, the textile straps. The straps do not satisfy either of the indicated tariff changes but since their value is less than seven percent of the transaction value of the finished

watch adjusted to an FOB basis, the de minimis rule applies and the watches can be considered originating.

Textiles. For textile goods classified in Chapters 50 through 63 of the Harmonized System, the de minimis rule is applied by weight (instead of value) to the component of the good that determines its tariff classification, as determined in accordance with the General Rules of Interpretation of the Harmonized System.

A Mexican manufacturer produces women's shirts which have knit bodies and woven sleeves. The composition of the knit bodies is 60 percent cotton, 35 percent wool, and 5 percent rayon, by weight. The sleeves are made of Japanese fabric that is 100 percent polyester. Since the knit bodies give the garments their essential character, the shirts are classified under HTS 6106.10. The Annex 401 rule of origin criterion for HTS 6106.10 is "yarn forward" (see Chapter 5 of this publication for rules of origin for textiles). Assuming the cotton and wool portions of the bodies meet the yarn-forward rule, the garment can still be considered originating even if the rayon yarn was from China since it falls under the de minimis provision. The sleeves are ignored in determining whether the shirts originate because only the component that determines the tariff classification of the goods is considered when applying the de minimis provision.

Agricultural Products. The Article 405 de minimis rule does not apply to agricultural goods provided for in Chapters 1 through 27 of the Harmonized System unless the non-originating materials are classified in subheadings different from the subheadings in which the finished goods are classified.

Ground coffee, sold in retail packages, is produced in Mexico (HTS 0901.21). Most of the beans are grown and roasted in Mexico but to give the coffee a unique flavor the producer adds some roasted beans from Kenya (HTS 0901.21). The value of the beans from Kenya is 5 percent of the transaction value, adjusted to an FOB basis, of each retail package. The Annex 401 origin criterion for HTS 09.01 is:

A change to heading 09.01 through 09.10 from any other chapter.

The coffee cannot be considered originating because the Kenyan beans do not undergo the required tariff change. The de minimis rule does not apply because the Kenyan beans are classified in the same subheading as the final good.

Note: If green (unroasted) coffee were imported from Kenya and roasted in Mexico, the de minimis rule would apply because green coffee beans are classified in HTS 0901.11, a different subheading. Thus, the ground coffee in retail packages would qualify as originating.

Cigars, Cheroots, Cigarrillos and Cigarettes. The de minimis amount for these products is nine percent, not seven percent, of the transaction value adjusted to an FOB basis.

Excluded Products. The Article 405 de minimis rule does not apply to the following materials:

certain dairy products and preparations that are used in the production of goods provided for in Chapter 4 of the HTS;

goods provided for in Chapter 4 of the HTS and some dairy preparations that are used in the production of certain goods containing milk, milk solids or butterfat;

some fruits and juices used in the production of certain juices and juice concentrates;

coffee beans used in the production of unflavored instant coffee (note: the Annex 401 origin criterion for unflavored instant coffee allows up to 60 percent non-originating coffee, so substantial allowance is already made for non-originating inputs);

fats, lards, oils and related products provided for in Chapter 15 of the HTS that are used in the production of Chapter 15 goods

(except olive, palm, and coconut oils, where the de minimis rule does apply);

Cane and beet sugar used in the production of sugars, syrups and other products provided for in HTS headings 1701-1703;

Sugar, molasses, sugar confectionery and other goods provided for in Chapter 17 of the HTS and cocoa powder provided for in HTS 18.05 that are used in the production of chocolate and other food preparations containing cocoa;

beer wine and other fermented beverages provided for in HTS headings 22.03-22.08 used in the production of alcoholic beverages and related products provided for in HTS headings 22.07 and 22.08; any non-originating material used in the production of many major appliances such as refrigerators, freezers, air conditioners, stoves, ranges, trash compactors, clothes-dryers and washing machines;

printed circuit assemblies used in the production of a good if the change in tariff classification prescribed by Annex 401 for that good places restrictions on their use.

Fungible Goods and Materials

According to Article 415 of the NAFTA, fungible goods are goods that are interchangeable for commercial purposes, and have essentially identical properties. When a producer mixes originating and non-originating fungible goods, so that physical identification of originating goods is impossible, the producer may determine origin of those goods based on any of the standard inventory accounting methods (e.g., FIFO, LIFO) specified in the Uniform Regulations. These provisions apply equally to fungible materials that are used in the production of a good.

Company Y of Mexico supplies clips to airplane manufacturers throughout North America. Some of the clips Y supplies originate in Mexico and others are made in China. All of the clips are of identical construction and are intermingled at Y's warehouse so that they are indistinguishable. On January 1, Company Y buys 3000 clips of Mexican origin; on January 3 it buys 1000 clips of Chinese origin. If Company Y elects FIFO inventory procedures, the first 3000 clips it uses to fill an order are considered Mexican, regardless of their actual origin.

Chapter 4 - Other Provisions Relating to Origin

The four main criteria set out in Chapter 2 of this publication are the basic conditions to confer origin. However, a good that does not meet such requirements may, in some cases, qualify as originating by using additional options described below.

Accessories, Spare Parts and Tools

Accessories, spare parts, and tools that are delivered with the goods and that form part of the goods' standard accessories, spare parts, or tools, are considered originating if the goods originate, and are disregarded in determining whether all the non-originating materials undergo any Annex 401 tariff change. This provision applies provided the accessories, spare parts and tools are invoiced with the goods and the quantities and value are customary for the goods. However, if the goods are subject to a regional value-content requirement, the value of the accessories, spare parts, and tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the goods.

High definition television receivers originating in Mexico are sold with remote controls made in Taiwan. The remote controls are invoiced and packed with the television receivers and are of a kind customarily sold with high definition television receivers. Since the television receivers originate, the remote controls are considered originating for purposes of satisfying the required change in tariff classification. The remote controls must, however, be counted as non-originating materials in the regional value-content calculation.

Packaging for Retail Sale

In the NAFTA, packaging and packing are used in different contexts. Packaging is used when referring to retail sale while packing is for shipping purposes. Packaging materials and containers in which goods are packaged for retail sale, if classified with the goods, are disregarded in determining whether all the non-originating materials used in the production of the goods undergo the applicable change in tariff classification set out in Annex 401. However, if the goods are subject to a regional value-content requirement, the

value of the retail packaging materials and containers is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the goods.

Leather footwear (HTS 64.03) is made in Mexico. The shoes are wrapped in tissue paper and packed in cardboard boxes described with the brand logo for retail sale; both the tissue paper and the cardboard box are of Brazilian origin. The Annex 401 origin criterion for 64.03 is:

A change to heading 64.01 through 64.05 from any heading outside that group, except from subheading 6406.10, provided there is a regional value content of not less than 55 percent under the net cost method.

Although the tissue paper and cardboard box are disregarded for purposes of the tariff change, their value must be counted as non-originating when calculating the regional value content.

Packing for Shipment

Packing materials and containers in which goods are packed for shipment are disregarded in determining whether the non-originating materials used in the production of the goods undergo an applicable change in tariff classification set out in Annex 401. They are also disregarded in determining whether the goods satisfy a regional value-content requirement.

Company X makes chairs (HTS 9401.69) in Mexico from Swedish furniture parts (HTS 9401.90). Company Y of Canada buys chairs from Company X for C$10.90; this price includes C$0.90 for Guatemalan crates used to hold each chair during international transit. The Annex 401 origin criterion for HTS 9401.69 is:

A change to subheading 9401.10 through 9401.80 from any other chapter; or

A change to subheading 9401.10 through 9401.80 from subheading 9401.90, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

60 percent where the transaction value method is used, or

50 percent where the net cost method is used.

The value of the Swedish parts is C$4.10. Under the transaction value method, the regional value content is:

10.00 - 4.10 x 100 = 59%

10.00

The chair does not originate because it does not have a minimum regional value content of 60 percent. Note that the packing and shipping costs ($0.90) were deducted from the transaction value prior to calculating the regional value content.

Transshipment

Goods that qualify as originating will lose that status if they do not remain under Customs control or undergo any operation outside the NAFTA region, other than unloading, reloading, or any other operation necessary to preserve them in good condition or to transport the goods to Canada, Mexico or the United States.

Surgical instruments made in the United States (wholly of originating materials) and cotton gowns and bandages made in Mexico (from

fibers and fabric wholly grown and produced in Mexico) are sent to the Dominican Republic where they are packaged together and then sterilized for use in operating rooms. Upon their return to the United States, the medical sets are not eligible for preferential treatment under the NAFTA because they underwent operations in the Dominican Republic that were not necessary to preserve the goods in good condition or to transport them to the United States.

Operations That Do Not Confer Origin

Article 412 provides that goods shall not be considered to originate if they are merely diluted with water or another substance that does not materially alter the characteristics of the goods. Thus, mere dilution--even if it results in a change in tariff classification--is not sufficient to confer origin. However, dilution coupled with another process may be sufficient to materially alter the characteristic of the goods and thereby confer origin.

Article 412 also indicates that goods will not be considered to originate if a preponderance of the evidence establishes that any production or pricing practice has been used to circumvent the intent of the Chapter 4 origin rules. The rules of origin are designed to ensure that the processing and costs incurred with respect to the products are commercially significant and appropriate to the goods, as defined by the tariff change rules and, when applicable, the value content rules.

Chapter 5 - Provisions for Specific Sectors

The four main criteria set out in Chapter 2 of this publication are the basic conditions to confer origin. However, a good that does not meet such requirements may, in some cases, qualify as originating by using additional options described below.

Textiles

Rules of Origin

The NAFTA provisions on trade in textiles and apparel are particularly detailed. The Annex 401 origin criteria aim to ensure that most of the production relating to textiles and apparel occurs in North America.

The basic origin rule for textile and apparel articles is "yarn-forward." This means that the yarn used to form the fabric (which may later be used to produce wearing apparel or other textile articles) must originate in a NAFTA country. Thus, a wool shirt made in Canada from fabric woven in Canada of wool yarn produced in Argentina would not be considered originating since the yarn does not originate within a NAFTA country. If, however, Argentine wool fiber was imported into Canada and spun into wool yarn, which was then used to produce the wool fabric, the shirt would be considered originating.

Less demanding rules of origin govern certain knitted underwear, brassieres, and shirts made from fabric in short supply in North America, and textile and apparel made from fabric not commonly produced in North America. For example, silk and linen apparel follow a single-transformation instead of a "yarn-forward" rule. Thus, silk blouses are considered originating even if made from non-originating fabric, provided the fabric is cut and sewn in one or more NAFTA countries. These exceptions give producers flexibility to import materials not widely produced in North America.

Yarn must be made in NAFTA region and subsequent processing must occur in NAFTA region.

On the other hand, stricter rules of origin exist for certain textile and apparel articles made of fibers that are produced in abundance in Canada, Mexico and the United States. For example, cotton yarn and cotton knitted fabrics follow a fiber-forward rule for goods traded between the three countries while man-made fiber sweaters follow a "fiber-forward" rule as to trade between the United States and Mexico.

Fiber must be made in NAFTA region and subsequent processing must occur in NAFTA region.

Tariff Preference Levels

To allow flexibility, textile and apparel exports will have access to tariff preference levels (TPLs). This means that specified quantities of yarns, fabrics, and made-up textile goods and apparel goods that do not meet the Article 401 origin criteria, but which are subject to significant processing in one or more NAFTA countries, can still be eligible for preferential NAFTA rates. Amounts of these goods exceeding the tariff preference level will be subject to most-favored-nation (MFN) rates of duty.

Tariff Elimination

The United States and Canada will continue to apply the rates of duty negotiated in the Canada-United States Free Trade Agreement as to trade between them.

With respect to trade between Mexico and Canada, tariffs for most textile articles will be phased-out over a period of eight years; for apparel, the adjustment period is ten years.

With respect to trade between Mexico and the United States, tariffs for many textile and apparel articles will be completely eliminated upon entry into force of the Agreement (tariff staging category A). Others will be eliminated over a six-year period, and all tariffs on textile and apparel articles will be eliminated within ten years. Moreover, Appendix 2.1 to Annex 300-B provides that duties for articles in the B6 (six-year) and C (ten-year) tariff phaseout categories shall at no time exceed 20 percent ad valorem. Although this maximum rate of 20 percent applies until the stipulated rate reductions result in an ad valorem rate that is 20 percent or less, it does not serve as the base for subsequent rate reductions.

The U.S. tariff on Mexican babies' sweaters of synthetic fibers (HTS 6111.30.40) is scheduled for a B6 (six-year) phaseout. Applying Appendix 2.1, the phase out will proceed as follows:

Calculated	Base rate (percent)	Reduced rate (percent)	Effective rate (percent)
1994	34.6	22.6	20.0
1995	22.6	18.0	18.0
1996	18.0	13.5	13.5
1997	13.5	9.0	9.0
1998	9.0	4.5	4.5
1999	4.5	0.0	0.0

Note that the calculated reduced rate column shows the rate that would apply for a six-year phaseout under the B6 staging schedule. However, since the phaseout rate cannot exceed 20 percent, the effective rate in 1994 is different, as shown in the effective rate column. Also, the effective rate for 1994 (20%) does not serve as the base rate for the subsequent tariff reductions. The calculated reduced rate for 1994 becomes the base rate for calculating subsequent reductions.

Quantitative Restraints (Quotas)

Upon entry into force of the Agreement, all prohibitions, restrictions, and consultation levels on imports and exports will be eliminated for originating textile and apparel articles. Thus, all import quotas for originating textile articles will be eliminated immediately. The United States will maintain import quotas for non-originating goods from Mexico in 14 categories; ten of them will be eliminated on the first day of the eighth phaseout year, and the last four categories on the first day of the tenth year.

Special Regime

The "Special Regime" provided bilateral access to the U.S. market for certain apparel articles assembled in Mexico of fabric formed and cut in the United States. This agreement was embodied in the U.S. tariff under HTS 9802.00.8010. Similar liberal access was also given to articles which were assembled in Mexico from fabric formed and cut in the United States, and which were then acidwashed, bleached, dyed or permapressed. Under the NAFTA, the United States eliminated all duties and quotas applied to both these categories of goods. These goods are now classifiable under a new tariff number, HTS 9802.00.90, that provides for:

Textile and apparel goods, assembled in Mexico in whole of fabrics wholly formed and cut in the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, provided that goods classifiable in chapters 61, 62 or 63 may have been subject to bleaching, garment dyeing, stone-washing, acid-washing or perma-pressing after assembly as provided herein.

This new tariff classification covers all textile and apparel goods that meet this description (e.g., handbags and hats), not just those categories that were covered by the Special Regime.

De Minimis

For textile goods classified in Chapters 50 through 63 of the Harmonized System, the de minimis amount is seven percent by weight (instead of value) of the component of the good that determines its tariff classification (see page 12).

Automotive Products

Rules of Origin

The NAFTA rules of origin for automotive products are based on a tariff change alone or a tariff change and a regional value-content requirement. The Agreement requires that the regional value content for these products be calculated using the net cost method. The regional value-content requirement for autos and light vehicles, and their engines and transmissions, will be 50 percent under the net cost method when the agreement enters into force; this percentage will be increased to 62.5 percent over an eight-year transition period. The regional value-content requirement for other vehicles (e.g., tractors, vehicles for the transport of 16 or more persons, trucks), and their engines and transmissions, as well as other auto parts, will be 50 percent under the net cost method; this percentage will be increased to 60 percent over an eight-year transition period. The ultimate regional value-content requirements will be phased in as follows:

Phase-In of Regional Value Content Requirements

Effective dates	01/01/1994	01/01/1998	01/01/2002
Autos and light vehicles listed in Annex 403.1	50%	56%	62.5%
Other heavy duty trucks listed in Annex 403.2	50%	55%	60%

Tracing

Tracing ensures greater accuracy in calculating the regional value content by tracking the value of major automotive components and subassemblies imported into the NAFTA region, so that the non-originating value of these components and subassemblies is reflected in the regional value-content calculation of the motor vehicle or in auto parts destined for original equipment use. This significantly limits the phenomenon known as "roll-up" and "roll-down," whereby the full value of goods is counted as originating or non-originating content even though they may contain a mix of originating and non-originating materials. For those components subject

to tracing, any non-originating (non-NAFTA) value will remain non-originating through all stages of assembly to the time of calculation of the regional value content of the motor vehicle (or auto part destined for original equipment use). The value of traceable automotive components is determined at the time the non-originating components are received by the first person in Canada, Mexico or the United States who takes title to them, after importation from outside the NAFTA region. The value of the components will be determined in accordance with standard valuation norms and will generally be the transaction value. Certain costs must be added to the transaction value if not included in it (e.g., packing, selling commissions).

Election to Average

Producers of automotive goods may elect to average their costs when calculating the regional value content. A motor vehicle producer may average the calculation over its fiscal year either by all motor vehicles or only those motor vehicles in a category that are exported to another NAFTA party. The four categories are:

the same model line of motor vehicles in the same class of vehicles produced in the same plant;

the same class of motor vehicles produced in the same plant;

the same model line of motor vehicles produced;

special averaging rules for CAMI Automotive, Inc.

Producers of components that must be traced may also average their costs. A producer may average its calculation:

over the fiscal year of the motor vehicle producer to whom the good is sold;

over any quarter or month, or

over its fiscal year, if the good is sold as an aftermarket part.

Producers may elect to calculate the average separately for any or all goods sold to one or more motor vehicle producers or calculate separately those goods that are exported to Canada, Mexico and/or the United States.

Other Provisions

The provisions on accumulation, fungible goods, and intermediate materials may be used to integrate and rationalize production processes throughout Canada, Mexico and the United States. Components that are subject to tracing for autos and light vehicles may be designated as intermediate materials. Producers may not, however, designate as an intermediate material any traceable component for motor vehicles other than autos and light vehicles.

Liberalization of the Mexican Market

The NAFTA will significantly liberalize access to the Mexican market in automotive products, including:

the immediate reduction by 50 percent of tariffs on passenger automobiles, with remaining tariffs phased out in equal stages over 10 years;

the immediate reduction by 50 percent of tariffs on light trucks, with remaining tariffs phased out in equal stages over five years;

tariffs on all other vehicles phased out in equal steps over ten years;

the immediate elimination of tariffs on certain auto parts, with duties on most other parts phased out over five years;

restrictions on the import of used cars into Mexico will be phased out between 2009 and 2019.

Electronic Products

Rules of Origin

The rules of origin for a significant number of electronic products (e.g., computers, telecommunications equipment, televisions, machine tools, semiconductors) are based strictly on a tariff change. This tariff change is structured to require that key subassemblies of the product be produced in North America. Where necessary, the tariff schedules of Canada, Mexico and the United States were modified to accommodate these rules of origin.

Television receivers with a picture tube of more than 14 inches in diameter may be considered originating only if the picture tube is produced or assembled in North America.

Other electronic products may originate in one of two ways: by satisfying a tariff change or by meeting a less substantial tariff change and a regional value-content requirement. The first tariff change is generally stricter (requiring the non-originating materials to be classified in another chapter) and therefore has no regional value-content requirement. The alternative tariff change frequently involves a transformation of parts into a finished good. Since this alternate tariff change reflects a lesser degree of processing, the regional value-content requirement ensures significant North American content.

Harmonization of MFN Rates

In one of the most unique features of the NAFTA, the three countries will harmonize, in a series of staged reductions, their respective most-favored-nation tariff rates on computers, computer parts and certain computer peripherals. Once the duty rates for these articles are harmonized, duties on goods will be payable only once upon entering the NAFTA territory. Once within the NAFTA territory, these articles are considered originating and may move among Canada, Mexico and the United States without payment of duty.

In addition, on January 1, 1994, the three countries changed their most-favored-nation tariff rates to free on virtually all semi-conductors and all local area network apparatus.

Agricultural Products

Market Access

The provisions for agricultural goods were negotiated bilaterally. As a result, different provisions apply as to trade between Mexico and the United States, than to trade between Canada and Mexico. For trade between the United States and Canada, the NAFTA incorporates the provisions of the United States-Canada Free Trade Agreement (CFTA).

Annex 703.2, Section A, of the Agreement applies to trade between the United States and Mexico. Mexico will replace import licensing requirements on U.S. agricultural products with either a tariff-rate quota or an ordinary tariff, that will be phased out over a 10-year period, with the exception of corn, dry beans and milk powder which will be phased out over a 15-year period. Import quotas imposed under Section 22 of the U.S. Agricultural Adjustment Act, as amended (7 U.S.C. 624) will be replaced with tariff-rate quotas for Mexico which will also be phased out over a 10-year period, with the exception of peanuts which will be phased-out over a 15-year period. Section 22 import quotas will remain in place for all imports from countries other than Mexico, including those from Canada. Quantities within the quota amounts will be subject to duty-free treatment while quantities in excess of the tariff-rate quota will be subject to an over-quota tariff.

Mexico and the United States will gradually liberalize bilateral trade in sugar. Both countries will apply tariff-rate quotas of equivalent effect on third country sugar by the sixth year after the Agreement enters into force. All restrictions on trade in sugar between the two countries will be eliminated by the end of the 15-year transition period. Details on the special provisions relating to market access for

sugar during the transition period are provided in Annex 703.2, Sections A and B.

Section B of Annex 703.2 relates to trade between Canada and Mexico. Both countries will eliminate all tariff and non-tariff barriers on their agricultural trade, with the exception of those in the dairy, poultry, egg, sugar and syrup sectors. Canada immediately exempted Mexico from import restrictions covering wheat, barley, and their products, beef and veal, and margarine. Canada and Mexico eliminated immediately or will phase out within five years tariffs on many fruit and vegetable products, while tariffs on remaining fruit and vegetable products will be phased-out over 10 years.

Safeguard Provisions

Safeguard provisions were included in the NAFTA to protect against import surges of certain sensitive goods while their tariffs are being phased out. A NAFTA country may invoke this safeguard mechanism in the form of a tariff-rate quota for agricultural goods specified in Annex 703.3 of the Agreement. This means that a designated quantity of imports will be allowed to enter at the NAFTA preferential tariff rate. Once the trigger level is met, the importing country may apply an over-quota rate which is to be the lesser of the most-favored-nation (MFN) rate in effect as of July 1, 1991, or the prevailing MFN rate. Tariffs on the in-quota volume will be phased out over a ten-year period. However, there will be no phaseout period for the over-quota tariff, until the tenth year of the Agreement, at which time the in-quota and the over-quota tariffs will be eliminated. These safeguard provisions apply bilaterally for trade between Canada and Mexico, and for trade between the United States and Mexico.

For trade between the United States and Canada the "snap-back" provision under the Canada-United States Free Trade Agreement will remain in effect for those products designated under that Agreement. "Snap-back" is a mechanism that allows the United States or Canada to apply a temporary duty on certain fresh fruits and vegetables originating in the other country and imported into its territory when import prices fall below a certain percentage of the average monthly import price, and planted acreage of the agricultural product is within certain limits.

Agricultural Marketing Standards

The NAFTA provides that when either Mexico or the United States applies a measure regarding the classification, grading or marketing of a domestic agricultural good, it will provide no less favorable treatment to like products imported from the other country for processing.

Chapter 6 - Certificate of Origin

Canada, Mexico and the United States established a uniform Certificate of Origin to certify that goods imported into their territories qualify for the preferential tariff treatment accorded by the NAFTA. Only importers who possess a valid Certificate of Origin may claim preferential tariff treatment for originating goods.

Language

A uniform Certificate of Origin is used in all three countries and is printed in English, French or Spanish. The Certificate shall be completed in the language of the country of export or the language of the importing country, at the exporter's discretion. Importers shall submit a translation of the Certificate to their own customs administration when requested.

Scope

A Certificate of Origin may cover a single importation of goods or multiple importations of identical goods. Certificates that cover multiple shipments are called blanket certificates and may apply to goods imported within any twelve-month period specified on the Certificate. Although a Certificate of Origin may cover goods imported over not more than a twelve-month period, it remains valid for NAFTA preference claims made up to four years from the date upon which it was signed.

A machine made in Canada qualifies for NAFTA tariff treatment and is exported with a Certificate of Origin signed on January 1, 1995. The U.S. importer does not enter the machine for consumption but instead places it in a customs bonded warehouse. He overlooks the Certificate of Origin and fails to claim NAFTA treatment for the machine upon entry into the warehouse. If the U.S. importer withdraws the machine from the warehouse for consumption on January 17, 1999, he will be barred from claiming NAFTA treatment upon withdrawal because the Certificate is over four years old and is no longer valid.

Completion of Certificate

The Certificate of Origin must be completed and signed by the exporter of the goods. Where the exporter is not the producer, the exporter may complete the Certificate on the basis of:

knowledge that the good originates;

reasonable reliance on the producer's written representation that the good originates; or

a completed and signed Certificate of Origin for the good voluntarily provided to the exporter by the producer.

Importers' Obligations

Importers claiming NAFTA preferential tariff treatment shall make a declaration, based on a valid Certificate of Origin in their possession, on the import documentation. Where no claim for preferential tariff treatment is made at the time of importation, importers may request preferential tariff treatment no later than one year after the date on which the good was imported, provided a Certificate of Origin for the goods is obtained.

Importers must provide the Certificate to the importing country's customs administration upon request, and must submit a corrected declaration and pay the corresponding duties whenever there is reason to believe that the Certificate contained inaccurate information.

The customs administration of the importing country may deny preferential tariff treatment to the goods if the importer fails to comply with any of the customs procedures set out in Chapter Five of the NAFTA.

Importers must maintain records pertaining to the importation for five years or such longer period as may be specified by their country.

Exporters' and Producers' Obligations

Exporters or producers that prepare Certificates of Origin shall provide copies to their own customs administration upon request.

Exporters or producers that provide a Certificate of Origin must maintain records pertaining to the exportation for five years or such longer period as may be specified by their countries.

Exporters or producers that complete a Certificate of Origin shall notify all parties to whom the Certificate was given of any change that could affect its accuracy or validity.

(CBP Form 434 - North American Free Trade Agreement Certificate of Origin)

(CBP Form 434A - North American Free Trade Agreement Certificate of Origin Continuation Sheet)

Chapter 7 - Entry Procedures

Claims

A claim for preferential NAFTA treatment is normally made on the customs documents used when the goods enter Canada, Mexico or the United States. Procedures will vary because the forms and practices of each country are different.

Procedures in Canada

To claim preferential tariff treatment under the NAFTA, importers shall make the written declaration of origin by completing field number 14 of the Revenue Canada B3 accounting document, with the appropriate code for the tariff treatment claimed. Importers must have the Certificate of Origin in their possession at the time of declaration, but do not have to present the Certificate at that time. However, it must be available upon request to present to Revenue Canada.

Low Value Commercial Importations. In order to claim NAFTA preferential tariff treatment on commercial importations valued at less than US$1000 (C$1,600), importers must have certification of origin in the form of a statement, either included in the invoice or attached to the invoice. The formal Certificate of Origin is not required, provided that the importation is not part of a series of importations arranged to circumvent the formal certification requirements.

Declaration of Origin After Importation. Importers can apply for a refund of duties where the imported goods would have qualified for preferential treatment at the time of entry but no claim was made because the importer did not have a Certificate of Origin at that time.

Any person who paid the duties on the goods may apply for the refund within one year from the time the goods were originally accounted for. The application for refund will be:

made using a Revenue Canada customs from B 2 under legislative authority 74 (1) (c.1) of the Customs Act; supported by a valid and complete Certificate of Origin; and

made at the customs office in the region where the goods were released or, where goods were imported by mail, at any customs regional office in Canada.

Corrections to Declaration of Origin. Importers or owners of goods for which preferential tariff treatment under the NAFTA was claimed, or any person authorized to account for those goods, will make a correction to the declaration of origin and pay any duties which may be owing on the amount. The correction must be made:

within 90 days after the person has reason to believe that the original declaration is incorrect; and

on a properly completed Revenue Canada Customs form B 2, under legislative authority 32.2(1) of the Customs Act.

Procedures in Mexico

Importers shall use a customs broker (a private-sector provider of services) of choice to obtain release of the merchandise. The customs agent shall provide to importers all necessary information relating to applicable duties and non-tariff regulations. The customs entry shall be accompanied by:

the commercial invoice when the customs value of the merchandise is determined in accordance with transaction value and exceeds US$300, or the equivalent in another foreign currency. The invoice shall be prepared in Spanish, English or French. In cases where it is

not, a translation may be prepared on the reverse or in the body of the invoice;

the bill of lading or airway bill of lading, endorsed by the transport company;

documents evidencing compliance with requirements relating to restrictions and non-tariff regulations applicable to the importation;

proof of the country of origin, and country of export, as appropriate;

the document demonstrating guarantee for the payment of additional amounts that may arise if the declared value is less than the estimated price established by the Secretary of the Treasury and Public Credit for the merchandise which has been undervalued;

Commercial invoices are not required for imports and exports made by foreign embassies and consulates or by their officials and employees; those relating to electric energy, crude petroleum, natural gas and their derivatives when made by pipeline; nor for personal effects. The importer shall present a declaration in writing and under oath for the customs officials, with those elements that permit determination of the customs value of the merchandise. A copy of this declaration shall be given to the customs broker or attorney for use in determining the customs value on the entry.

The customs agent prepares the import entry using information provided by the importer and pays monies owed to the private bank located within Customs. The customs broker then presents the merchandise, accompanied by the previously paid customs entry, to the mechanism for random selection for examination.

The customs official activates the mechanism for random selection, which determines whether or not the shipment will be examined. If the shipment is designated for review, the examination shall be accomplished within three hours. This period may be greater when discrepancies are discovered. If the shipment is not designated for review, it will be released immediately so that it may proceed to its destination.

Importers shall retain documentation that proves the legal importation of the merchandise, in case the fiscal authorities require clarification after customs clearance.

Procedures in the United States

Existing entry procedures will continue to be used under the NAFTA. As with other trade preference programs, importers must claim NAFTA benefits to receive preferential duty treatment. In the United States, a claim is made by inserting "MX" or "CA," as appropriate, as a prefix to the tariff classification number on Customs Form 7501. The Importer of Record's signature on the CF 7501, in conjunction with this prefix, constitute the importer's written declaration that the goods are entitled to benefits.

Pursuant to Article 503 of the Agreement, the U.S. does not require a Certificate of Origin for entries valued at US$2500 or less. For commercial shipments, however, the invoice accompanying the importation should include a statement certifying that the goods qualify as originating goods.

Port Directors may require a valid Certificate of Origin before allowing NAFTA treatment if they determine that a series of importations was used instead of a single importation to evade the requirement to obtain a Certificate of Origin.

Claims After Importation

Occasionally, claims for NAFTA treatment will not be made when merchandise is entered. In some cases this may be because the Agreement prohibits importers from claiming preferential treatment under the NAFTA unless they possess a valid Certificate of Origin, which may not be obtained until after the goods are entered. Or importers may simply not be aware that the goods qualify for preferential treatment.

Where goods would have qualified for preferential treatment when imported but no claim was made at that time, importers may apply for a refund of any excess duties paid as a result of the goods not having been accorded NAFTA treatment. Requests for refunds must be made within one year after the date of importation.

Importers should request refunds from the Customs Port Director of the port where the goods were entered. Requests must be in writing and shall include:

- a declaration that the goods qualified as originating goods at the time of importation;
- a copy of the Certificate of Origin;
- other supporting documentation as required.

Importers are required to promptly make corrected declarations and pay any duties owed if they determine that a Certificate on which a declaration was based contained incorrect information.

Chapter 8 - Origin Verifications

Generally

The NAFTA authorizes the importing country's customs administration to conduct verifications of the exporter or producer to determine whether goods qualify as originating as certified by the Certificate of Origin. Verifications are principally conducted by written questionnaires and verification visits. Other methods of verification can be done by telephone, facsimile or other means.

Questionnaires

Questionnaires may be sent by the importing country to an exporter/producer who executed a Certificate of Origin. They are used to help determine if the exporter's/producer's goods meet the NAFTA rules of origin. The information requested on the questionnaire should be information used by the exporter/producer to determine whether its goods qualify for NAFTA preferential treatment before signing the Certificate of Origin. If insufficient information is provided on the questionnaire to make a determination of origin, a Customs officer may obtain additional information by undertaking a customs verification visit. After the customs authority of the importing country establishes whether the good originates, it must issue a written determination to the exporter/producer indicating its findings.

Verification Visits

Verification visits are performed by the customs administration of the importing country in the territory of the exporting country, and are used to verify that the exporter's/producer's goods meet the NAFTA rules of origin.

Prior to conducting a verification visit, the customs administration must provide written notification of its intention to conduct the visit to the exporter or producer whose premises are to be visited, and to the customs administration and the embassy of the NAFTA country in whose territory the visit will occur. Written consent from the exporter or producer whose premises are to be visited must be obtained prior to conducting the visit. The exporter or producer whose goods are the subject of a verification visit has the right to designate two observers to be present during the visit.

If an exporter or producer of goods that are subject to a verification of origin does not consent to the verification visit within 30 days of receiving notification of the proposed visit, or does not cooperate during the visit, preferential NAFTA tariff treatment may be withdrawn from the goods. The exporter or producer will still have the right of review and appeal against this determination.

An origin determination is made upon completion of a verification visit. This determination can be reviewed and appealed in the importing country. Any confidential business information that is collected may only be disclosed to authorities who are responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters.

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Chapter 9 - Penalties

Canada, Mexico and the United States maintain measures imposing criminal, civil or administrative penalties for violations of their laws and customs procedures, including those relating to the NAFTA. For example, an exporter or producer who falsely represents on a NAFTA Certificate of Origin that a good qualifies as originating may be penalized. An importer may also be penalized for making a false claim for preferential NAFTA treatment on the customs import documentation.

Exporters and producers may avoid such penalties if they promptly and voluntarily advise all concerned parties of the incorrect information contained in the Certificate of Origin. Importers may avoid penalties if they promptly and voluntarily submit a corrected customs declaration and pay any duties that are owed upon learning of the incorrect information contained in the Certificate of Origin.

Importers, exporters and producers who prepare a Certificate of Origin may also be penalized for failing to retain their records as required by the NAFTA (generally five years).

Chapter 10 - Denial of Benefits

In some instances, the importing country's customs administration may choose to deny NAFTA benefits for failure to comply with its customs regulations. Examples of conduct which may result in the denial of preferential treatment include:

failure to provide a certificate of origin for commercial importations with NAFTA line items valued in the U.S. at $2,500; in Canada at C$1,600; and in Mexico at US $1,000 or less, when there are reasonable grounds for believing that the importation forms part of a series of importations carried out with the purpose of evading the certification of origin requirement;

failure by the person who signed a Certificate of Origin to consent in writing to a verification visit during the 30 days after notice of an intent to conduct such a visit is sent.

A country may also deny benefits once its customs administration verifies that a good does not qualify as originating. Where two or more verifications indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good qualifies as originating, the customs administration of the importing country may withhold preferential tariff treatment from identical goods exported or produced by that person, until compliance with the rules of origin is established.

Chapter 11 - Advance Ruling Procedures

Generally

Importers, exporters and producers of goods may obtain advance rulings from the customs administrations of Canada, Mexico and the United States regarding application of the NAFTA to future importations of goods into each country. Canada, Mexico and the United States will issue advance rulings on:

whether materials imported from non-NAFTA countries and used in the production of a good undergo the tariff change set out in

Annex 401 as a result of production occurring entirely in the NAFTA region;

whether a good satisfies a regional value-content requirement;

for purposes of determining whether a good satisfies a regional value-content requirement, the appropriate basis or method for value to be applied by an exporter or producer in the territory of another NAFTA country, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good;

for purposes of determining whether a good satisfies a regional value-content requirement, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the net cost of a good or the value of an intermediate material;

whether a good qualifies as an originating good;

whether a good that re-enters its territory after the good has been exported from its territory to the territory of another NAFTA country for repair or alteration qualifies for duty-free treatment under the NAFTA;

whether the proposed or actual marking satisfies country of origin marking under Annex 311 of the Agreement;

whether an originating good qualifies as a good of Canada, Mexico or the United States under Annex 300-B (Textile and Apparel Goods), Annex 302.2 (Tariff Elimination) or Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures); or

whether a good is a qualifying good under Chapter Seven.

Canada, Mexico and the United States are bound by the rulings they issue. Rulings will be applied to importations covered by the ruling beginning on the date of issuance or on such later date specified in the ruling. An advance ruling may not be applied if it is determined that imported goods differ materially from the goods which were the subject of the ruling or if the person requesting the ruling has failed to act in accordance with the terms and conditions of the ruling.

If an advance ruling is no longer valid it may be modified or revoked. Generally the modification or revocation will only apply to importations that occur after the date of the modification or revocation. Reassessments will only be made retroactively in certain limited circumstances such as when the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions or when the modification or revocation is to the benefit of the person who requested the ruling. A person who has received an advance ruling has the right to appeal that ruling.

Procedures in Canada

Importers in Canada, and exporters and producers of goods in Mexico and the United States, may obtain an advance ruling regarding future importations. Requests should be made in writing to Trade Administration Services, Client Services Division in the customs region in which most of the importations will occur. (Addresses of Customs regions are listed in Chapter 15 of this publication.) Customs will review all written applications and will advise the applicant of any additional information that is required. A standard has been set for issuing these rulings within 120 days from the receipt of complete information.

An advance ruling number can be noted on the Certificate of Origin, the Revenue Canada Customs Invoice, or in the description field on the B3 accounting document. Although anyone importing the goods covered can use the number and is encouraged to do so, the ruling is only binding with regard to the person or persons to whom the ruling was issued. All information received is treated as confidential and therefore details of the ruling will only be released to the person to whom the ruling was issued.

Procedures in Mexico

Importers in Mexico, and exporters and producers in Canada and the United States may request an advance ruling from the Legal General Administration of Revenue of the Tax Administration Service of Mexico (Administración General Jurídica de Ingresos del Servicio de Administración Tributaria de México). Requests should be sent to: Av., Hidalgo No. 77, Modulo 1, P.B. Col. Guerrero, 06300 Mexico, D.F. ; Fax 52-5-521-4764.

Applications must be submitted in writing, according to the provisions established in Articles 18 and 34 of the Fiscal Code of the

Federation, and limited to matters described in Article 509 of the Agreement.

The competent authority must treat the information received as confidential. Therefore, details of the ruling will only be released to the person to whom the ruling was issued. The authority must issue the ruling within four months.

Procedures in the United States

Importers in the United States, and exporters and producers of goods in Canada and Mexico, may obtain advance rulings regarding application of the Agreement to prospective and ongoing transactions from the U.S. Customs Service. Advance rulings must be requested in accordance with the procedures described in Title 19 of the Code of Federal Regulations, Part 181.93. Requests must be written in English and must contain a complete statement of all relevant facts relating to the NAFTA transaction. Such facts include: the names, addresses and other identifying information of all interested parties (if known); the name of the port of place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling.

Advance rulings may be requested from the Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229, or the National Commodity Specialist Division, U.S. Customs Service, 1 Penn Plaza - 10th floor, New York, New York 10119. For questions relating to regional value-content requirements, requests can be expedited by sending them directly to the Office of Regulations and Rulings.

Chapter 12 - Appeal Procedures

Procedures in Canada | Procedures in Mexico | Procedures in the United States

Generally

The NAFTA grants various parties the right to appeal origin determinations, country of origin marking determinations and advance rulings made by any NAFTA country. Each country must provide at least one level of administrative review independent of the official or office responsible for the determination that has been appealed. In addition, each country must ensure that judicial or quasi-judicial review is provided in accordance with its domestic law for persons whose appeals are denied at the administrative level.

Origin determinations may be appealed by the person who completed and signed the Certificate of Origin or by the importer claiming preferential NAFTA treatment. The person who signed the Certificate of Origin may appeal, whether or not an identical appeal on the origin of goods has been filed by the importer. Persons whose goods have been the subject of a country of origin marking determination or who have received an advance ruling may also appeal unfavorable decisions.

Procedures in Canada

In Canada, an appeal of an origin determination is known as a request for the redetermination of the origin of the goods, and can be requested by the person who completed and signed the Certificate of Origin or by the importer. A request by the person who completed and signed the Certificate of Origin should be made in writing to the customs region in which most of the importations occurred. The application may contain multiple requests for goods imported under different transactions and line numbers, if all the requests involve the origin of a single product. The transaction and line number of the importation or importations in question must be submitted with the request.

The person who completed and signed the Certificate of Origin will be informed by letter of the outcome of the request for the redetermination of the goods. The decision made pursuant to a request for redetermination of the origin of goods can be further

appealed by the person who requested the redetermination through the provisions set out in the Customs Act.

An appeal of an advance ruling or a marking determination may be requested in writing from the office that issued the ruling or made the marking determination.

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Procedures in Mexico

Differences with final determinations issued by the customs authorities shall proceed according to the recourses established in the Federal Fiscal Code, except that appeals shall be made by the interested party before filing suit in the Federal Fiscal Court.

When an appeal is filed against determinations made in terms of Article 31 of the Customs Act, the customs authority may reinstate the administrative procedure, as appropriate, before issuing the resolution that will conclude the appeal, as well as resolving the appeal and issuing a new determination to replace the contested one.

The appeal shall be filed with the authority that issued or executed the contested determination, within 45 days following the effective date of the notification.

If the party's domicile is outside the town in which the customs authority that issued or executed the contested determination is located, the appeal may be filed in the nearest tax office or sent by certified mail with return receipt, as long as the mailing is made from the place where the appellant lives. The date of filing shall be the date on which the appeal is submitted or mailed, as the case may be.

If the decision of the fiscal authority is adverse, the party may appeal the decision to the Federal Fiscal Court, a quasi-judicial body. The decision of the Federal Fiscal Court may be appealed by either party to the Judicial Court. Decisions of this court may be appealed to the Supreme Court.

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Procedures in the United States

Appeals of Advance Rulings. Persons who request an advance ruling may obtain administrative review of that ruling in accordance with Title 19, Code of Federal Regulations, @ 181.102. Appeals must be filed within 30 calendar days after issuance of the ruling and shall contain:

the name and address of the person seeking review (or of his or her agent);

the Customs identification number or employer identification number in the case of a U.S. importer, the employer number or importer/exporter number assigned by Revenue Canada in the case of a Canada exporter or producer, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer;

the number and date of the advance ruling;

the numbers and dates of any involved entries;

the nature of, and justification for, the objection.

Protests of Origin Determinations. Exporters and producers in Canada and Mexico who completed a Certificate of Origin may obtain administrative review of an origin determination by filing a protest in accordance with Title 19, Code of Federal Regulations,@ 174.12, within 90 calendar days after the date of liquidation of the entry. Protests shall be filed on Customs Form 19 or a letter of the same size clearly labeled "Protest" and setting forth the same content as the Form 19. Protests shall be filed with the port director of the port of entry. Protests shall contain the same information as noted above for advance rulings, as well as the date of liquidation of the entry for the goods which is the subject of the protest. A protesting party may file one protest for multiple entries filed in the same port if all the entries involve the same merchandise and the protest involves a decision common to all the entries.

If requested by all interested parties (e.g., the exporter, producer and/or importer), Customs will consolidate multiple protests of a single determination of origin and one notice of its decision will be issued to all parties without regard to whether the notice reflects confidential business information. Where all interested parties do not request consolidation, the U.S. Customs Service may consolidate the protests for internal processing but will issue separate, confidential notices to each Protestant.

If the U.S. Customs Service decides to allow the protest of a producer or exporter, either in whole or in part, any monies owed by the Government will be refunded to the party that paid those duties (generally the importer) even if that party never filed a protest.

Protests and Petitions for Reconsideration of Marking Decisions. U.S. importers may protest adverse marking decisions in accordance with Title 19, Code of Federal Regulations, @ 174.12. Protests must be made within 90 calendar days after the date of the issuance of Customs Form 4647 (Notice to Mark and/or Notice to Redeliver) or within 90 calendar days of the date of liquidation in the case of the assessment of marking duties. Exporters and producers in Canada and Mexico do not have an independent right to protest adverse marking decisions. However, they may intervene in any protest filed by the importer by following the procedures described in Title 19, Code of Federal Regulations, @ 181.115. To assist the exporter/producer to adequately prepare an intervention protest, the U.S. Customs Service will issue a statement within 30 days concerning the basis for the marking decision if requested by the exporter/producer in accordance with Title 19, Code of Federal Regulations, @ 181.113.

To intervene in an importer's protest, the exporter or producer must file a type-written statement of intervention, in English, with the or port director with whom the importer's protest was filed. This statement shall be in the form of a letter, signed by the exporter or producer, and shall contain:

the name and address of the exporter or producer (or authorized agent);

the employer number assigned by Revenue Canada for Canadian exporters or producers, and the federal taxpayer registry number (RFC) for Mexican exporters or producers;

the number and date of each entry involved in the adverse marking decision;

a specific description of the merchandise;

a complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision;

a detailed statement of position regarding why the exporter/producer believes the marking decision is contrary to Annex 311 of the NAFTA;

a statement as to whether the exporter/producer requested the basis of Customs' decision in accordance with Title 19, Code of Federal Regulations, @ 181.113, and a copy of the response (if available);

the number assigned to the importer's protest;

a statement that the intervenor is the exporter or producer of the merchandise and, if the intervenor is the exporter, a statement that it maintains sufficient records to enable Customs to evaluate the merits of its claim regarding the adverse marking decision;

a statement regarding whether the intervenor desires confidentiality in accordance with Title 19, Code of Federal Regulations @ 181.121. Absent this statement, Customs will issue a consolidated response to all interested parties without regard to confidentiality.

If the importer does not protest a marking decision within 90 days, the exporter/producer may petition Customs for reconsideration

of the adverse marking decision. The petition for reconsideration shall contain the same information as an intervention protest and shall be filed in the same manner.

Judicial Review. Any party whose appeal, protest or petition for reconsideration has been denied, in whole or in part, may contest that denial by filing a civil action in the United States Court of International Trade within 30 days after the date of the mailing of the notice of denial.

Chapter 13 - Country of Origin Marking

Generally

For goods made in one country with no foreign inputs, determination of the country of origin is easy--it is the country of production. Increasingly, however, goods are processed in multiple countries using both domestic and foreign materials, thereby complicating the determination of the country of origin. The NAFTA provides that Canada, Mexico and the United states write specific rules defining "country of origin". In the United States, the marking statute, Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304) requires that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked with its country of origin. Paragraph 1 of Annex 311 of the NAFTA provides that the NAFTA parties shall establish "Marking Rules" to determine when a good is a good of a NAFTA country. The Marking Rules established by the United States are set forth in 19 CFR Part 102 which are used to determine the country of origin. The Marking Rules are distinct from the rules of origin that are used to determine whether a good is originating under Article 401 of the Agreement. The Marking Rules are all based on a tariff change and are largely the same in all three countries.

Originating goods and goods which undergo the specific tariff classification changes prescribed by the Marking Rules are considered goods of Canada, Mexico or the United States (as appropriate) and are subject to the Agreement's provisions on marking. Goods may be marked with the country of origin in English, Spanish or French, except that Canada, Mexico and the United States may, as part of their general consumer information measures, require that an imported good be marked with its country of origin in the same manner as prescribed for domestic goods. Unless specifically exempted, Canada, Mexico and the United States may require that goods imported from another NAFTA country be marked in a conspicuous place legibly, indelibly, and sufficiently permanently to indicate to the ultimate purchaser the country of origin of the article. Such marking requirements must comply with the NAFTA's general provisions on methods of marking, exemptions, etc.

Method

Generally, goods of Canada, Mexico and the United States may be marked using any reasonable method, including stickers, labels, tags, or paint. The marking must be conspicuous, legible and sufficiently permanent to survive normal distribution and store handling.

Containers

A usual container imported empty, whether or not disposable, need not be marked with its country of origin. (A usual container is one in which the good will ordinarily reach its ultimate purchaser.) However, the master container in which the usual containers are imported may be required to be marked with the country of origin of its contents.

A wine producer in California imports empty glass bottles made in Mexico to bottle its wine. The empty glass bottles need not be individually marked "Mexico" but the United States may require that the outer cardboard box in which the bottles are imported be marked "Mexico."

A usual container imported filled, whether or not disposable is not required to be marked with its own country of origin. A NAFTA country may, however, require that the container be marked with the country of origin of its contents, unless the contents are marked with their country of origin and the container can be readily opened for inspection of the contents, or the marking of the contents is clearly visible through the container.

Exemptions

Canada, Mexico and the United States shall exempt from country of origin marking requirements a good of another NAFTA country that:

is a crude substance;

is imported for use by the importer and is not intended for sale in the form in which it was imported;

is to undergo production in the territory of the importing country by the importer, or on its behalf, in a manner that would result in the good becoming a good of the importing country under the marking rules;

by reason of its character, or the circumstances of its importation, the ultimate purchaser would reasonably know its country of origin even though it is not marked;

was produced more than 20 years prior to its importation;

for purposes of temporary duty-free admission, is in transit or in bond or otherwise under customs administration control;

is an original work of art; or

is provided for in subheading 6904.10 [ceramic building bricks, blocks and tiles], or heading 8541 [diodes, transistor and similar semiconductor devices] or 8542 [electronic integrated circuits and microassemblies].

Additional products are exempt from country of origin marking requirements, but Canada, Mexico and the United States may require that their outermost usual containers be marked to indicate the country of origin of the goods they contain. These include a Canadian, Mexican or U.S. good that:

is incapable of being marked;

cannot be marked prior to exportation to the territory of another NAFTA country without causing injury to the goods;

cannot be marked except at a cost that is substantial in relation to its customs value so as to discourage its exportation;

cannot be marked without materially impairing its function or substantially detracting from its appearance.

is in a container that is marked in a manner that will reasonably indicate the good's origin to the ultimate purchaser.

was imported without the required marking and cannot be marked after its importation except at a cost that would be substantial in relation to its customs value, provided that the failure to mark the good before importation was not for the purpose of avoiding compliance with the requirement.

Goods Not Marked at Time of Importation

Importers are allowed, where administratively practicable, to mark goods that are not marked at the time of importation, prior to their release from customs control or custody. This rule applies unless an importer has repeatedly violated the country of origin marking requirements after receiving written notification that the goods are required to be marked prior to importation.

Canada, Mexico and the United States may impose special marking duties or penalties for repeated violations of country of origin marking requirements after written notification, as well as for removal of the goods from customs custody or control before the goods have been marked. Additional duties or penalties may also be imposed for deceptive marking.

For further information regarding the country of origin marking requirements and exceptions in the United States, see 19 CFR Part 134.

Chapter 14 - Effect of the NAFTA On:

The four main criteria set out in Chapter 2 of this publication are the basic conditions to confer origin. However, a good that does not meet such requirements may, in some cases, qualify as originating by using additional options described below.

Drawback and Duty Deferral Programs

The NAFTA provisions on drawback and duty deferral applies to goods imported into Canada or the United States and subsequently exported to the other country (i.e., Canada or the United States) on or after January 1, 1996. The NAFTA provisions on drawback and duty deferral will apply to goods imported into Canada or the United States and subsequently exported to Mexico, or imported into Mexico and subsequently exported to Canada or the United States, on or after January 1, 2001. Thus, transactions involving either the importation of goods into Mexico or the exportation of goods to Mexico will not come under the drawback and duty deferral provisions of the NAFTA until January 1, 2001.

Drawback

Drawback is the refund, reduction or waiver in whole or in part of customs duties assessed or collected upon importation of an article or materials which are subsequently exported.

Under the NAFTA, the amount of customs duties that will be refunded, reduced or waived is the lesser of the total amount of customs duties paid or owed on the goods or materials when imported into a NAFTA country and the total amount of customs duties paid or owed on the finished good in the NAFTA country to which it is exported.

No NAFTA country, on condition of export, will refund, reduce or waive the following: antidumping or countervailing duties, premiums offered or collected pursuant to any tendering system with respect to the administration of quantitative import restrictions, tariff rate quotas or trade preference levels, or a fee pursuant to Section 22 of the U.S. Agricultural Adjustment Act. Moreover, same condition substitution drawback was eliminated effective January 1, 1994.

Duty Deferral Programs (Inward Processing)

Duty deferral programs include foreign trade zones, temporary importations under bond, bonded warehouses, "maquiladoras," and inward processing programs. The NAFTA provides a new method for duty deferral with respect to importations of goods under the duty deferral programs that are subsequently exported to another NAFTA country. Upon exportation, the goods will be treated as if withdrawn for domestic consumption, thus subject to the applicable customs duties. The customs administration assessing such duties may waive or reduce them by an amount that does not exceed the total custom duties paid to the NAFTA country to which the goods are exported. Such reduction or waiver will be made when the claimant presents satisfactory evidence of the customs duties paid in the NAFTA country to which the article was exported. The claimant has 60 days to present this satisfactory evidence, otherwise the customs administration of the exporting country will collct the duties. Should a claimant subsequently obtain satisfactory evidence, the duties may be refunded to the extent allowed, upon timely presentation of the evidence according to the laws and regulations of each NAFTA country.

January 1, 1996 - December 31, 2000

Company A imports fabric from Canada into the United States to make ironing board covers. The fabric is entered into a foreign trade zone and no duty is paid. Company A exports the ironing board covers to Company B in Canada, who pays $40 in import duties to the Government of Canada. If the ironing board covers were withdrawn for consumption in the United States, $100 would be owed to the Government of the United States. The United States, however, may reduce the amount Company A owes by $40 if Company A gets a receipt from Company B in Canada as evidence that this amount was paid to the Government of Canada and submits the receipt within 60 days. The total amount paid is still that which would have been owed if the goods had been withdrawn for consumption in the United States ($100), except that $60 has been paid to the Government of the United States and $40 to the government of Canada.

January 1, 2001 and after

Company A imports fabric from the United States into Mexico to make ironing board covers. The fabric is entered under the maquiladora regime and no duty is paid. Company A exports the ironing board covers to Company B in Canada, who pays $20 in import duties to the Government of Canada. If the ironing board covers were withdrawn for consumption in Mexico, $100 would be owed to the Government of Mexico for customs duties. Therefore, that is the amount Company A owes the Government of Mexico. Mexico, however, may reduce the amount Company A owes by $20 if Company A gets a receipt from Company B as evidence that this amount was paid to the Government of Canada and submits that receipt within 60 days. The total amount paid is still that which would have been owed if the goods had been withdrawn for consumption in Mexico ($100), except that $80 has been paid to the Government of Mexico and $20 to the Government of Canada.

Commercial Samples and Printed Advertising Materials

The NAFTA provides for the duty-free importation of certain commercial samples and printed advertising materials. The commercial samples must be of negligible value, that is, their value cannot exceed one U.S. dollar (or the equivalent in the currency of Mexico or Canada) or they must be marked, torn, perforated or otherwise unsuitable for sale or use except as commercial samples. Only printed advertising materials classified in Chapter 49 of the Harmonized Tariff Schedule can be imported duty-free under this provision. The list includes brochures, pamphlets, leaflets, trade catalogues and yearbooks.

Temporary Admissions

The NAFTA requires Canada, Mexico and the United States to grant duty-free temporary admission to certain classes of goods imported from another NAFTA country. Duty-free entry cannot be conditioned on whether or not directly competitive or substitutable goods are available in the importing country. In addition, the goods do not have to originate in a NAFTA country.

Certain Professional Equipment, Sports Goods, and Goods for Display

A person can temporarily import duty-free: professional equipment (tools of the trade), equipment for the press or for sound or television broadcasting, cinematographic equipment, goods for sports purposes, and goods for display or demonstration. As a condition of duty-free entry, a NAFTA country may require that these goods:

not be sold or leased while in its territory;

be accompanied by a bond if they are not originating goods as defined in Chapter 4 of the NAFTA;

only remain in the importing country until the departure of the person or within a reasonable time established by each country;

be capable of identification when exported;

be imported in no greater quantity than is reasonable for its intended use;

be imported by a national or resident of another NAFTA country that seeks temporary entry;

be used solely by or under the personal supervision of the person importing the good in the exercise of the business activity, trade or profession.

Commercial Samples and Advertising Films

Commercial samples and advertising films may also be imported temporarily without payment of duties. As a condition of duty-free entry, a NAFTA country may require that these goods:

be imported solely for the solicitation of orders for goods, or services from another country;

not be sold, leased or put to any use other than exhibition or demonstration while in its territory;

be capable of identification when exported;

be exported within such period as is reasonably related to the purpose of the temporary admission; and

be imported in no greater quantity than is reasonable for its intended use.

Repairs and Alterations

Pursuant to a Warranty

None of the NAFTA countries may assess customs duties on goods that are exported for repair or alteration in another NAFTA country pursuant to a warranty and then re-imported. This is true regardless of the origin of the goods and regardless of whether the goods could have been repaired or altered in the exporting country.

Not Pursuant to a Warranty

A NAFTA country may, however, choose to assess customs duties on the value of the repairs or alterations performed in another NAFTA country that are not pursuant to a warranty. The rate of duty applied is the preferential NAFTA rate, regardless whether the goods repaired or altered are originating. Canada will assess duties on the value of such repairs or alterations performed in Mexico and the United States using the rate of duty applicable under the Canada-United States Free Trade Agreement, as incorporated into Annex 307.1 of the NAFTA, for goods from both countries. Mexico will not assess duties on repairs or alterations performed in the United States or Canada. The United States will not assess duties on repairs or alterations performed in Mexico, not pursuant to a warranty, but will assess duties on those performed in Canada.

User Fees

Canada

Canada Customs has no user fees.

Mexico

Mexico will eliminate its customs processing fee on June 30, 1999, for originating goods from both Canada and the United States. The fee will not be eliminated in stages--it will continue to apply until June 30, 1999, when it will be eliminated entirely.

United States

Goods that originate in the NAFTA territory and that qualify to be marked as Canadian goods according to the Marking Rules are exempt from the merchandise processing fee as of January 1, 1994. Goods that originate in the NAFTA territory and that qualify to be marked as Mexican goods according to the Marking Rules are subject to the merchandise processing fee at the reduced rate of .19 percent. The reduced rate for the Mexican goods is not the result of a staged phaseout but rather because the Agreement specifies that neither Mexico nor the United States may raise its user fees as to goods of the other. Thus, when the United States increased its merchandise processing fee to .21 percent on January 1, 1995, Mexican goods that originate in the NAFTA territory continued to be subject to the previous rate of .19 percent. This reduced fee will continue to apply until June 30, 1999, when it will be eliminated completely. Other fees are unaffected and will be collected whether the goods originate in Canada or Mexico. Other fees include cotton, beef, pork, honey, etc. Mail entries will continue to be subject to a US$5 processing fee.

Neither Mexico nor the United States may raise its user fees as to goods of the other pending elimination of the fee on June 30, 1999.

Antidumping and Countervailing Duties

Under the NAFTA, Canada, Mexico and the United States retain the right to apply their antidumping and countervailing duty laws to goods imported from another NAFTA country. The Agreement also establishes a mechanism for independent binational panels to review final antidumping and countervailing duty determinations by administrative authorities in each country. Private parties wishing to contest an administrative decision respecting goods of a NAFTA country may request that a panel be established. In such cases, the panel process will substitute for domestic judicial review in the country where the administrative decision was made.

A binational panel will decide whether the antidumping or countervailing determination was made in accordance with the domestic law of the importing country. If a binational panel finds that an error was committed in the antidumping or countervailing determination, it may send the decision back to the appropriate government agency for correction. Decisions by a panel are binding and cannot be appealed to a domestic court. In addition, the Agreement establishes safeguard mechanisms designed to guarantee the integrity of the panel process.

For example, if a Mexican exporter wishes to challenge a final determination rendered by the U.S. Department of Commerce before a binational panel, the Mexican exporter must file its complaint with the appropriate office in SECOFI. The Government of Mexico, in turn, may request binational panel review on behalf of the Mexican exporter.

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Assembly Operations (U.S. HTS 9802.00.80)

Many U.S. imports from Mexico and Canada are entered under U.S. tariff item 9802.00.80, which provides for a reduction in duties for articles assembled abroad in whole or in part of U.S. components. The duty on such articles is assessed on the full value of the article, less the cost or value of the U.S. components.

The rate applied to the dutiable value is that which would apply to the article as imported if it were not classified under HTS 9802.00.80. Hence, the duty reduction does not result from using a different rate of duty but rather by deducting the cost or value of the U.S. components from the total value of the article. Under the NAFTA, HTS 9802.00.80 may be used in conjunction with the preferential rate of duty that would apply to the article if it were classified in Chapters 1-97 of the tariff, provided the article originates and complies with all other requirements relating to the NAFTA. (For information on how the NAFTA will affect textile products under the Special Regime, see Chapter 5 of this publication.)

Races (HTS 8482.99.10) made in the United States are exported to Mexico for incorporation into ball bearings (HTS 8482.10.50). The remaining components are all made in Mexico. The imported ball bearing is considered originating because it is produced entirely in Canada, Mexico and/or the United States exclusively from originating materials (see Article 401(d)) and, accordingly, it is entitled to the NAFTA preferential rate of duty--9.9 percent during the first year of the Agreement. Assuming the total value of each ball bearing is US$10.40 and the value of the U.S. races in each bearing is US$2.40, the dutiable value is US$8.00 (US$10.40 - US$2.40). The duty calculation is:

9802.00.80 $ 2.40

8482.10.50 $ 8.00 x 9.9% = 0.80

The duty liability using only the preferential NAFTA rate would be US$1.03 per bearing. By using HTS 9802.00.80 in conjunction with the preferential rate of duty, additional savings of US$0.23 per ball bearing are made.

GSP/GPT/MFN

Generalized System of Preferences (United States)

President Clinton terminated the designation of Mexico as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP), effective January 1, 1994. Goods of Mexico entered on or after January 1, 1994 must meet the NAFTA rules of origin to qualify for reduced rates of duty; if they do not, they are dutiable at the MFN rate.

General Preferential Tariff (Canada)

As different preferential tariff schemes each have their own unique rules of origin, it is possible that goods exported from Mexico which cannot be considered originating under the NAFTA might still be eligible for the General Preferential Tariff (GPT) when imported into Canada. However, traders should be aware that the GPT is separate from the NAFTA and Canada is not under any obligation to continue such benefits.

Most-Favored-Nation Rates of Duty

Generally, the NAFTA does not affect the countries' most-favored-nation (MFN) rates of duty. That is, each country continues to assess duty on non-NAFTA goods as it did in the past. Products processed in Canada, Mexico and/or the United States that do not qualify for NAFTA preferential treatment also continue to be subject to MFN rates of duty (or to GPT rates, in the case of Mexican products imported into Canada).

With limited exceptions, Canada, Mexico and the United States will not harmonize their MFN rates of duty. Canada, Mexico and the United States are harmonizing, in a series of staged reductions, their MFN tariff rates on computers, computer parts and certain computer peripherals. Once the duty rates for these articles are harmonized, duties on these goods will be payable only upon entering the NAFTA territory. Once within the NAFTA territory, these articles may move among Canada, Mexico and the United States without payment of duty.

In addition, on January 1, 1994, the three countries changed their MFN tariff rates to free on virtually all semiconductors and all local area network apparatus.

Skip To See Also for this Page

Chapter 15 - Contacts for Additional Assistance

Canada

NAFTA Hotline, Customs Information Line

P.O. Box 2989

26 Arrowsmith Road

Hamilton, Ont L8N3V8

Telephone: 1-800-661-6121, 905-308-8524

Web Site:

(For inquiries concerning Canadian customs and NAFTA issues. Telephone service available in English, French and Spanish.)

The Director

Policy and Administration

Antidumping and Countervailing Division

Customs and Trade Administration Branch

Revenue Canada, Customs, Excise and Taxation

191 Laurier Avenue West

Ottawa, Ontario K1A OL5

Telephone: (613) 954-7251

Fax: (613) 954-2510

(For information on administrative procedures and investigations under Canada's antidumping and countervailing duty laws)

The Secretary

Canadian International Trade Tribunal

333 Laurier Avenue West

Ottawa, Ontario K1A OG7

Telephone: (613) 990-2452

Fax: (613) 956-7139

(For information on the role of the Canadian International Trade Tribunal)

The Secretary, Canadian Section

NAFTA Secretariat

90 Sparks Street, Suite 705

Ottawa, Ontario K1P 5B4

Telephone: (613) 992-9388

Fax: (613) 992-9392

Web Site: (NAFTA Secretariat)

(For information on the binational panel review process)

INFOEX

Department of Foreign Affairs and International Trade

125 Sussex Drive

Ottawa, Ontario K1A OG2

Telephone: (613) 944-4000 (Ottawa area)

Fax: (613) 996-9709

(For publications on NAFTA and information on export programs and services. InfoEX is a counseling and reference center for Canadian exporters and companies interested in world markets)

Manager, Origin Audits

Compliance Management Division

Customs and Trade Administration Branch

Revenue Canada, Customs, Excise and Taxation

191 Laurier Avenue West, 6th floor

Ottawa, Ontario K1A OL5

Telephone: (613) 954-5641

Fax: (613) 954-4494

(For information on regional value content or audits)

Chief, Interdepartmental Programs-Admissibility Programs Division

Trade Policy and Interpretations Directorate

Customs and Trade Administration Branch

Revenue Canada, Customs, Excise and Taxation, 5th Floor

555 Mackenzie Avenue

Ottawa, Ontario K1A OL5

Telephone: (613) 954-7129

Fax: (613) 952-1698

(For information on marking)

Mexico

Secretaría de Comercio y Fomento Industrial (SECOFI)

Subsecretaría de Negociaciones Comerciales Internactionales

Calle Alfonso Reyes #30, Piso 9

Col. Condesa

C.P. 06140, Mexico City, D.F.

Telephone: 729-91-01/02/00 ext. 6000-6004

52-5-729-9101 (outside Mexico)

Fax: 729-93-07

SECOFI-NAFTA Desk

(202) 728-1700

Web Site: (NAFTAWorks.org)

(The NAFTA office is the representative branch of the Mexican Ministry of Economy, at the Embassy of Mexico, in Washington, D.C. Our mission is to: promote exports and foreign investment in Mmexico, assist companies to do business with Mexico, follow up day-to-day Mexico-U.S. trade relations.)

SECOFI

Delegación Jalisco

Ave. Mariano Otero 4341 1 y 2 piso

Col. Valle Verde

C.P. 44550

Guadalajara, Jal.

Telephone: 91-3-121-0644/0075/1115

52-3-121-0644 (outside Mexico)

Fax: 91-3-121-0534

SECOFI

Delegación Nuevo León

Edificio Cintermex, Local 87

Av. Fundidora y Adolfo P.

Col. Obrera

C.P. 64010

Monterrey, N.L.

Telephone: 91-8-369-6480-84

52-8-369-6480-84 (outside Mexico)

Fax: 91-8-369-6487

(For information on Rules of Origin and Phaseout Periods)

Trade Commission of Mexico

Banco Nacional de Comercio Exterior, S.N.C.

Camino a Sta. Teresa 1679

C.P. 01900, Mexico City, D.F.

Telephone: 52-5-227-9000 (referral number in Mexico)

214-688-4095 (referral number in U.S.A.)

416-867-9292 (referral number in Canada)

(A federal financial institution charged with extending credit and promotional services in support of investment opportunities in Mexico and its foreign trade)

United States

U.S. Department of Commerce

Trade Information Center

1401 Constitution Avenue, N.W.

Washington, DC 20230

Telephone: 1-800-USA-TRAD[E], 1-800-872-8723, (202) 482-0543

Web Site: (Trade Information Center)

(For information on exporting from the United States to Mexico and Canada)

U.S. Department of Agriculture

The Interamerica Group

South Building, Room 5509

14th Street and Independence Avenue SW

Washington, DC 20250

Telephone: (202) 720-1289

Fax: (202) 690-1093

Web Site: (Foreign Agricultural Service)

(For information (excluding phytosanitary norms) on exporting agricultural products from the United States under the NAFTA)

U.S. Department of Agriculture

Animal & Plant Health Inspection Service

Trade Support Team

South Building, Room 1128

14th Street and Independence Avenue SW

Washington, DC 20250

Telephone: (202) 720-7677

Fax: (202) 690-2861

Web Site: (APHIS)

(For information on phytosanitary norms affecting agricultural products imported into the United States under the NAFTA)

Bureau of Alcohol, Tobacco, and Firearms

Washington, D.C. 20226

(202) 927-8110 (alcoholic beverages)

(202) 927-8320 (arms and ammunition)

Web Site: (ATF)

(For information on importing alcoholic beverages, arms and ammunition)

U.S. Fish and Wildlife Service

(703) or (800) 358-2104

Web Site: (U.S. Fish and Wildlife Service)

(For information on importing animals and animal products)

Trilateral/NAFTA Side Agreements

The NAFTA Customs Web Site

Information on the NAFTA as it relates to customs issues. Material from the customs services of Canada, Mexico and the United States is available in English, French, and Spanish.

NAFTA Secretariat

Created by Canada, Mexico and the United States and pursuant to Article 2002 of the NAFTA, it is responsible for the administration of the dispute settlement provisions of the Agreement.

Commission on Environmental Cooperation (CEC)

Created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC), the CEC was established to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law.

North American Commission for Labor Cooperation

Created by Canada, Mexico and the United States under the North American Agreement on Labor Cooperation ("NAALC"), the NAALC is the first agreement, and the Commission is the first organization, linking labor rights and labor standards to an international trade agreement.