

ASK THE TIC

NAFTA UPDATE: FREQUENTLY ASKED QUESTIONS ABOUT THE NORTH AMERICAN FREE TRADE AGREEMENT

by JoAnne Queen,
Trade Information Center

The information presented in this document is meant to serve as a guide to NAFTA issues faced by U.S. companies. Only the NAFTA text itself and the customs regulations of each country that may be issued to implement NAFTA are definitive. For complex issues or where interpretation is required, exporters should seek legal assistance or an advanced ruling from the Customs Administration in the country to which they are exporting.

Q & A WHAT ISSUES ARE COMMONLY MISUNDERSTOOD ABOUT THE NAFTA?

The NAFTA establishes special preferential tariff treatment for goods “originating” in and traded among NAFTA countries. However, the NAFTA Certificate of Origin is not a required entry document for shipments between the United States and Mexico or Canada and should only be prepared if the product qualifies under the NAFTA Rules of Origin for preferential tariff treatment. The exporter must first initiate a process to determine if the product qualifies and whether a Certificate of Origin is needed.

Completion of a NAFTA Certificate of Origin is an affirmation that the party signing the document has researched the terms of the NAFTA and has determined that the goods covered by the certificate are “originating”, as defined in the agreement. Preparation of this certificate imposes certain legal rights, obligations and liabilities on the party signing the document and should be based on a careful inquiry into the terms of the NAFTA as they apply to each product.

One of the most difficult issues exporters face when exporting to one of the NAFTA countries is determining whether the product can be considered an “originating good”. Origin is not determined by where the product begins its export journey. The term “originating” means qualifying under the rules of origin set out in Chapter Four of the NAFTA agreement. The NAFTA Certificate of Origin must be completed in order to receive preferential tariff treatment upon entry into the importing country.

Many U.S. companies are unfamiliar with the agreement and mistakenly believe that products produced in the United States, Canada, or Mexico qualify for NAFTA treatment. Most firms are unaware that they need to determine whether there are any foreign parts, components, or raw materials used to manufacture their final product.

U.S. companies must obtain or confirm the appropriate Schedule B or Harmonized Tariff Classification Number

for their product(s) in order to reference the rules of origin that govern the allowable percentage of foreign components. The classification number is also used by shippers in reporting export shipments, by governments in compiling official trade statistics, and by customs authorities in determining the relevant import duties to be paid. Rules of origin can be found at www.nafta-customs.org under Annex 401 of the NAFTA agreement.

Q & A WHAT EXACTLY DOES “WHOLLY OBTAINED OR PRODUCED” MEAN?

Preference criteria tell Customs and the importer how the goods qualified as originating. It is impossible to choose an origin criterion without first reading and fully understanding the rules of origin frequently referred to as Article 401 of the NAFTA and Annex 401. There are six preference criteria: A through F.

Criterion A corresponds to goods wholly obtained or produced entirely in Canada, Mexico or the United States. “Obtained” does not mean “purchased,” but is simply used to acknowledge that production is not the only way goods are created.

When qualifying products and determining the preference criterion, many exporters experience difficulty answering the question of whether their product has been wholly or totally produced in a NAFTA territory.

For the purpose of NAFTA, “wholly obtained or produced” means that the goods contain no foreign parts, components or raw materials. Some examples of products wholly obtained or produced entirely in the territory of one or more of the countries are mineral goods; vegetable goods; live animals; and goods obtained through hunting, trapping, or fishing. Additional information concerning preference criteria and a complete list of goods considered to be wholly obtained or produced in one of the NAFTA countries is available on the TIC website at <http://tradeinfo.doc.gov>.

Q & A HOW ARE PRODUCTS QUALIFIED FOR SPECIAL TARIFF TREATMENT UNDER THE NAFTA?

Under NAFTA, U.S., Mexican, and Canadian tariffs on “originating” goods are gradually being phased out. Originating goods are those that meet the appropriate NAFTA Rule of Origin. In order to obtain preferential tariff treatment on these products, exporters must complete a NAFTA Certificate of Origin.

The following process can be used as a guide to determine if your product qualifies and how to fill out a certificate of origin:

1. Check with the production manager [or the supplier(s) of the product] about any foreign components, parts, or raw materials used to manufacture the product.
2. If there are foreign components, parts, or raw materials, visit the Census website www.census.gov/foreign-trade/www: Click on the Schedule B Search Engine (or call 301-457-1084) and obtain the Schedule B number for the foreign component and the end product.
3. Check with the Trade Information Center (TIC) to see if there are any duties on the end product.
4. If there are no duties, it is not necessary to complete the NAFTA Certificate of Origin.
5. If the duties using NAFTA Preference are less than the usual duties applied under Most Favored Nation (MFN) status, complete a NAFTA Certificate of Origin.
6. Read or review the NAFTA Agreement and Annex 40I, Rules of Origin.
7. Look up the specific rule of origin for the product (listed according to the tariff classification number) and apply the rule to the product to determine whether it meets the requirement. Use the Schedule B numbers obtained in Step 2 above.
8. If the product does not meet the specific Rules of Origin, it does not qualify for preferential tariff treatment and the Certificate of Origin should not be completed.
9. If the product meets the specific Rules of Origin, review the Preference Criterion, choose the appropriate letter (A thru F), and complete the NAFTA Certificate of Origin.
10. For additional guidance or clarification on Steps 6, 7, and 9 above, visit the Trade Information Center website at <http://tradeinfo.doc.gov> or call the TIC at 1-800-USA-TRAD(E).



HOW ARE COMPLICATED, MULTI-PART PRODUCTS QUALIFIED UNDER NAFTA?

U.S. manufactured products are often composed of many inputs or components. For such products, it may be necessary to obtain an advance customs ruling from the customs authority in the importing country. Advance rulings are issued on a wide range of NAFTA-related issues, including whether an imported good qualifies as an originating good; whether a specific regional value-content requirement or tariff classification change requirement is met; and whether the proposed marking of a good satisfies country of origin marking requirements.

For Mexican or Canadian Customs contact information, call the Trade Information Center at 1-800-USA-TRAD(E).



WHAT ARE THE CHANGES TO MEXICO'S MAQUILADORA REGIMEN IMPLEMENTED JANUARY 1, 2001?

Under NAFTA, Mexico can no longer waive import duties for non-NAFTA products that are processed in Mexico and exported to a NAFTA partner. The new regulations stipulate that, as of 2001, a maquiladora company that exports its final product to the United States or Canada will have to pay the Mexican government, within 60 days of export, import duties for the product's non-NAFTA inputs.

The changes to the law affecting the import of materials, components and supplies for the maquiladora industry grant U.S. companies competitive advantage over non-NAFTA suppliers.

U.S. companies are encouraged to learn about the rules affecting the maquiladora industry and to comply with the necessary requirements to become potential suppliers, including the preparation of the NAFTA Certificates of Origin that would grant them the benefit of exporting their products duty-free into Mexico.

Additional information about the maquiladora sector is available on the Trade Information Center's (TIC) website at <http://tradeinfo.doc.gov>



WHERE CAN I FIND MORE INFORMATION ON THE NAFTA OR ON HOW TO QUALIFY PRODUCTS?

The text of the NAFTA agreement can be found on the following websites:

<http://tradeinfo.doc.gov>
www.nafta-customs.org
www.sice.oas.org/trade/nafta/naftatce.asp

For assistance with specific questions on qualifying products under NAFTA or clarification of unfamiliar trade terms, International Trade Specialists are available at the Trade Information

The Trade Information Center (TIC) is operated by the International Trade Administration of the U.S. Department of Commerce for the 20 federal agencies comprising the Trade Promotion Coordinating Committee. These agencies are responsible for managing the U.S. Government's export promotion programs and activities. You, too, can "Ask the TIC" by calling 1-800-USA-TRAD(E) toll free, Monday through Friday, 8:30-5:30. Or visit the TIC's website at <http://tradeinfo.doc.gov>.