



Because Compliance is not Optional

NAFTA

Presented by:

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Introduction





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What Does NAFTA Stand For?

New Avocation For Technocrats and Attorneys

Not really!! It's the
North American Free Trade Agreement



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Introduction

NAFTA Implementation Act passed in 1993 to become effective January 1994

Treaty addresses many subjects in addition to the trade in goods, including treatment of intellectual property, investments, professional services, etc.

Provides for the elimination of duties on most originating goods traded between the NAFTA parties



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Introduction

Exporters of NAFTA goods have a cost advantage over other imports

To obtain benefits requires strict compliance with NAFTA's complicated rules

Failure to comply with regulations may result in assessments of duties and/or penalties

NAFTA Rules and Regulations center on two primary areas: Certificates of Origin and Rules of Origin

NAFTA



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TARIFF REDUCTION (Article 302)

Depending on how the importing country scheduled the good's
HTS code reduction is:

Immediately on the date of implementation = 01/01/94

In five years after the date of implementation = 01/01/98

In ten years after the date of implementation = 01/01/03

In fifteen years after the date of implementation = 01/01/08



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Key Definitions





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Terminology

- **NAFTA** = North American Free Trade Agreement
- **ORIGINATING** = Qualifying under the Rules of Origin (Article 401)
- **NON ORIGINATING** = Goods Originating outside of the NAFTA Territory
- **TERRITORY** = Canada, United States, and Mexico



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Terminology

- **GOOD** = Item currently being examined
- **HTS Code** = The numerical code applicable to a good according to the Harmonized Tariff System used by World Trade Organization countries (U.S. = 10 digits)
- **MATERIAL** = A good that is used in the production of another good
- **PRODUCER** = A person who engages in the production of a good in the territory of a party
- **VALUE** = The value of a good or material for purposes of calculating customs duties.



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Harmonized Tariff Schedule Primer





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What is the HTS and HTS Codes?

- Classification is the act of determining which provision in the customs tariff (the harmonized tariff schedules of the U.S. - The HTS) best describes the imported merchandise.
- There are over 10,000 choices
- The HTS is over 4" thick
- There are several levels of rules of interpretation



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How do I Classify my Good?

- HTS Classification is based on a “best fit” method
- There are specific rules of interpretation
- There are specific chapter notes
- There are previous Customs rulings available for reference



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HTS Infrastructure

- Chapter = First 2 digits
- Heading = First 4 digits
- Subheading = First 6 digits
- Classification = All 10 digits

Example; 8429.52.1020 = Mining
Shovel



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General Rules of Interpretation

1. Best Fit (most technical descriptions vs. general description)
2. “Essential Character”
3. Specially Designed or Generic End Use



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Steps to Classifying under the HTS

1. Look up your good in the alphabetical index of the HTS
2. Refer to the specific heading/subheading/tariff code from the alpha list
3. Examine the tariff code and determine fitness
4. If there are no references to the good in the alpha list, use a keyword search in Adobe
5. Read the chapter notes for any special classification rules
6. To validate or search for a prior ruling, visit the Customs Cross Ruling website at <http://rulings.customs.gov/>

[Actual HTS, 2007](#)



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Classification Example #1

1. 1J159 First Reduction Pinion Shaft
2. Raw Material Hot Rolled Steel for Pinion Shaft



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Classification Example #2

Electric Mining Shovel Shipped under;

Scenario A. Unassembled, 95% on one vessel,
one shipment

Scenario B. Unassembled, 2 different sailings at
2 different times.

Where does Essential Character come into play?



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NAFTA Rules of Origin





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NAFTA Rules of Origin

- Chapter Four of the NAFTA is called Rules of Origin
- The different origination criteria are listed in Article 401 and directly relate to the Preference Criterion codes used in the Certificate of Origin
- “A good shall originate in the territory of a Party where:
”
...



Rules of Origin – Criterion A Because Compliance is not Optional

A good shall originate in the territory of a Party where:

- The good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415”
- Preference Criterion A was much abused after implementation of the NAFTA and is still abused today
- “Obtained” does not mean purchased



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Rules of Origin – Criterion A

Wholly obtained or produced (as defined by Article 415)

- Mineral goods extracted in the territory
- Vegetable goods harvested in the territory
- Live animals born and raised in the territory
- Goods obtained from hunting or fishing in the territory
- Goods taken from the sea by vessels
- Goods produced on board factory ships
- Goods taken from the seabed
- Goods taken from outer space
- Waste and scrap
- Goods produced in the territory exclusively from goods described above



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Rules of Origin – Criterion B

A good shall originate in the territory of a Party where:

Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of...the parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required,”



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Rules of Origin – Criterion B

Goods meeting preference criterion B can have incorporated foreign (non-NAFTA Party) material, but the foreign material must meet;

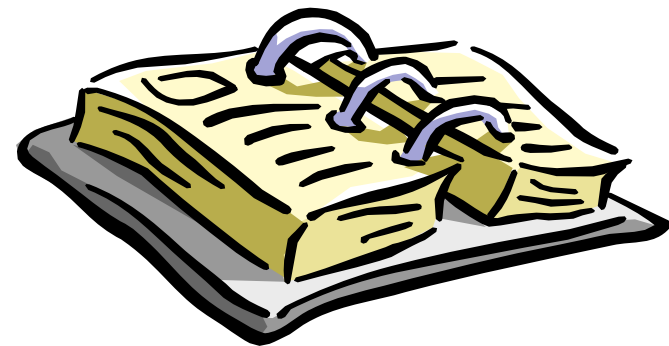
- a change in tariff classification (tariff-shift);
- a regional value-content requirement (RVC); or
- both a change in tariff classification and a regional value content requirement



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Rules of Origin – Tariff Shifts

- Tariff shift requirements are listed in Annex 401 of the NAFTA and General Note 12 of the HTSUS
- The HTS number for the finished good determines the rule of origin that will be applicable



Annex 401



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Rules of Origin

Regional Value Content (RVC)

$$RVC = \frac{TV - VNM}{TV}$$

- RVC is the Regional Value Content, expressed as a percentage
- TV is the transaction value of the good (adjusted price paid or payable from producer)
- VNM is the value of non-originating materials used by the producer



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Rules of Origin Regional Value Content (RVC) Example, Transaction Value Method

Transaction value

Price payable (sale by producer)	\$60
Customer-provided material.....	7
Customer-provided packaging.....	3
Transaction value.....	\$70
Non-originating materials.....	\$23

$$RVC = \frac{TV - VNM}{TV} \quad RVC = \frac{70 - 23}{70} = 67.1\%$$



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Rules of Origin Regional Value Content (RVC)

$$RVC = \frac{NC - VNM}{NC}$$

- RVC is the Regional Value Content, expressed as a percentage
- NC is the net cost of the good (total cost minus marketing, shipping, packing, royalties, etc.)
- VNM is the value of non-originating materials used by the producer when producing the good



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Rules of Origin Regional Value Content (RVC) Example, Net Cost Method

Product costs:

Originating materials.....	\$30
Non-originating materials.....	40
Indirect materials.....	20
Period costs.....	10
Total per unit cost of good.....	\$100

Excluded costs:

Sales, marketing.....	\$5
Shipping and packing.....	5
Non-allowable interest.....	2
Total excluded costs.....	\$12

$$RVC = \frac{NC - VNM}{NC} = \frac{88 - 40}{88} = 54.5\%$$



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Rules of Origin – Criterion C

“A good shall originate in the territory of a Party where:”

- The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials”
- Goods meeting preference criterion C are produced in the NAFTA territory with materials that individually meet eligibility requirements prior to production (“originating materials”)



Rules of Origin – Criterion D Because Compliance is not Optional

A good shall originate in the territory of a Party where:

- The good is produced entirely in the territory but one or more non-originating materials provided for as parts under the Harmonized System does not undergo a change in tariff classification because...



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Rules of Origin – Criterion D

- (i) The good was imported in an unassembled or disassembled form but was classified as an assembled good pursuant to HTS rules

OR

- (ii) The heading for the good provides for both the good itself and its parts and is not further subdivided into subheadings, or the subheading provides for both the good itself and its parts



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Rules of Origin – Criterion D

- Does not apply to goods provided for in Chapters 61 through 63 of the HTS (includes articles of apparel and clothing accessories, other textile articles, and needlecraft sets)
- Goods must also meet the regional value content requirement
- Important Note: Though there are HTS codes that cover a good and its parts, there are usually exclusionary chapter notes for certain generic parts (nuts, bolts, screws, gaskets, washers, etc.)



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Steps to Determine NAFTA Eligibility

1. **Classify the Finished Article with proper HTS Code**
2. **Identify for preference criterion A**
3. **Identify for preference criterion C**
4. **For preference criterion B:**
 - **Look up special rules of origin in Annex 401**
 - **Examine each item for applicable tariff shift per Annex 401**
 - **Perform any RVC as specified in Annex 401**
5. **Examine applicability under preference criterion D**

Process Flow Chart



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Rules of Origin Example #1

Part # 20P1858D327 - ½ - 13 X 1-1/4 DRILLED HEAD CAPSCREW This part is purchased. We have a NAFTA Cert. from vendor, showing HTS 7318.15 Preference Criterion B Producer NO (2) Net Cost NO Country of Origin CA Covering Blanket Period 1/1/07 - 12/31/07



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Rules of Origin – Criterion E

Note: Two Preference Criteria, E and F, are listed on the Certificate of Origin instructions, but not specifically noted in Article 401

- Certain automatic data processing goods and their parts, specified in Annex 308.1, that do not originate in the territory are considered originating when imported from a NAFTA country when most-favored-nation rate conforms to rate established in Annex 308.1 and is common to all NAFTA countries.



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Rules of Origin – Criterion E

Annex 308.1 includes goods classified in the following headings:

- 8471 – Automatic data processing (ADP) machines and units thereof**
- 8473 – Parts of ADP machines**
- 8504 – Computer power supplies**
- 8533 – Metal oxide varistors**
- 8541 – Diodes, transistors, and semiconductor devices**
- 8542 – Electronic integrated circuits**



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Rules of Origin – Criterion E

- Annex 308., paragraph 1, requires NAFTA countries to reduce most-favored-nation rates to agreed-upon rates
- When paragraph 1 is in effect, the good shall be considered originating when imported from a NAFTA country





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Rules of Origin – Criterion F

Note: Two Preference Criteria, E and F, are listed on the Certificate of Origin instructions, but not specifically noted in Article 401

F) The good is an originating agricultural good under preference criterion A, B, or C, above and is not subject to a quantitative restriction in the importing NAFTA country because it is a “qualifying good” as defined in Annex 703.2, Section A or B.



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Rules of Origin – Criterion F

- **Annex 703.2 deals with market access for agricultural goods**
- **Annex 703.2 Section B details agreements between Canada and Mexico**
- **Annex 703.2 Section A details agreements between Mexico and the U.S.**

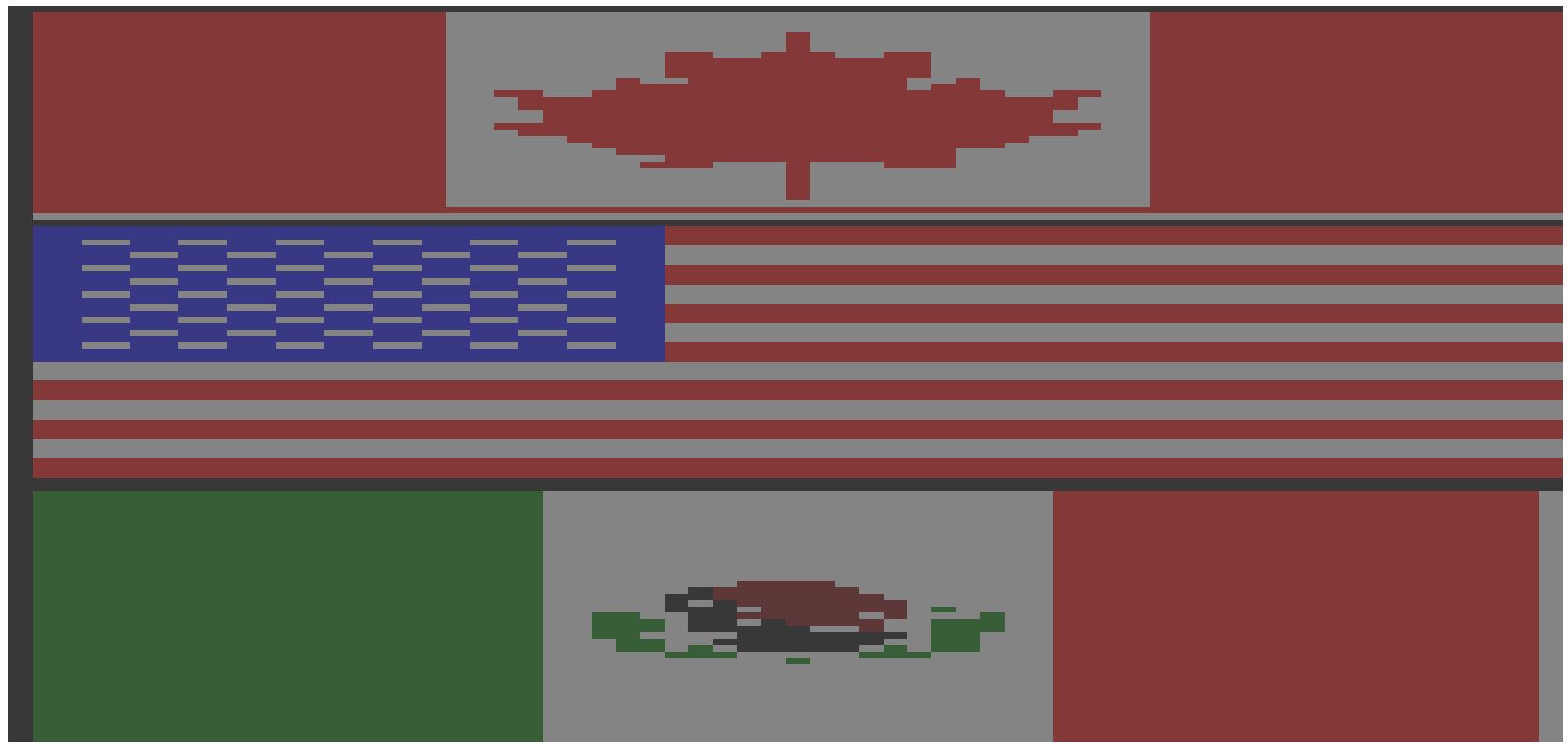
Works to eliminate non-tariff barriers (fees, voluntary export restraint agreements, etc.)

Qualifying good: an originating good that is an agricultural good except that operations performed in or material obtained from Canada shall be considered as if they were performed in or obtained from outside the NAFTA territory



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NAFTA Certificate of Origin





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NAFTA Certificate of Origin

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

NORTH AMERICAN FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN

Approved through 12/01/96
OMB No. 1515-0204
See back of form for Paperwork Reduction Act Notice.

Please print or type

19 CFR 181.11, 181.22

1. EXPORTER NAME AND ADDRESS		2. BLANKET PERIOD (DDMMYY)	
TAX IDENTIFICATION NUMBER:		FROM:	
3. PRODUCER NAME AND ADDRESS		TO:	
TAX IDENTIFICATION NUMBER:		4. IMPORTER NAME AND ADDRESS	
TAX IDENTIFICATION NUMBER:		TAX IDENTIFICATION NUMBER:	

5. DESCRIPTION OF GOODS(S)	6. HS TARIFF CLASSIFICATION NUMBER	7. PREFERENCE CRITERION	8. PRODUCER	9. NET COST	10. COUNTRY OF ORIGIN

I CERTIFY THAT:

- THE INFORMATION ON THIS DOCUMENT IS TRUE AND ACCURATE AND I ASSUME THE RESPONSIBILITY FOR PROVING SUCH REPRESENTATIONS. I UNDERSTAND THAT I AM LIABLE FOR ANY FALSE STATEMENTS OR MATERIAL OMISSIONS MADE ON OR IN CONNECTION WITH THIS DOCUMENT;
- I AGREE TO MAINTAIN, AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM, IN WRITING, ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE;
- THE GOODS ORIGINATED IN THE TERRITORY OF ONE OR MORE OF THE PARTIES, AND COMPLY WITH THE ORIGIN REQUIREMENTS SPECIFIED FOR THOSE GOODS IN THE NORTH AMERICAN FREE TRADE AGREEMENT, AND UNLESS SPECIFICALLY EXEMPTED IN ARTICLE 411 OR ANNEX 401, THERE HAS BEEN NO FURTHER PRODUCTION OR ANY OTHER OPERATION OUTSIDE THE TERRITORIES OF THE PARTIES; AND
- THIS CERTIFICATE CONSISTS OF () PAGES, INCLUDING ALL ATTACHMENTS.

11a. AUTHORIZED SIGNATURE		11b. COMPANY	
11c. NAME (Print or Type)		11d. TITLE	
11e. DATE (DDMMYY)	11f. TELEPHONE NUMBER	11g. (Voice)	11h. (Facsimile)

Customs Form 434 (121793)

Deceptively simple

Remember that this is a signed document, with the signer attesting to the correctness of all information



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NAFTA Certificate of Origin

I certify that:



The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statement or material omissions made on or in connection with this document.



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NAFTA Certificate of Origin

Penalties for false statements or omissions:

19 USC 1592

“No person...may enter...any merchandise into the commerce of the United States by means of...any document...which is material and false.”

“It is unlawful for any person to certify falsely...in a NAFTA Certificate of origin...that a good to be exported to a NAFTA Country qualifies under the rules of origin.”



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NAFTA Certificate of Origin

Penalties for false statements or omissions:

19 USC 1592, 19 CFR 181.11 and 181.21

Penalties may be avoided if corrections and notifications are made voluntarily and promptly (within 30 calendar days after date of discovery)

- **To all persons receiving the certificate**
- **To U.S. Customs with duty payment**

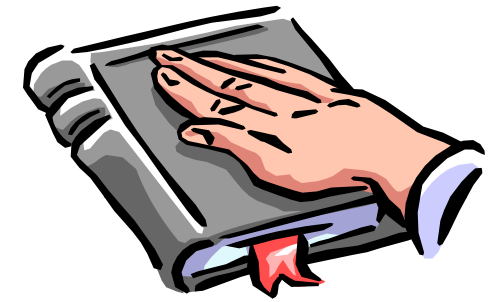




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NAFTA Certificate of Origin

I certify that:



I agree to maintain and present upon request, documentation necessary to support this certificate, and to inform in writing, all persons to whom this certificate was given of any changes that would affect the accuracy or validity of this certificate.



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NAFTA Certificate of Origin

Record Keeping Requirements

Exporters and Producers (19 CFR 181.12, 19 USC 1508(b))

Shall keep for five years after Certificate date, a certificate copy and all records relating to the origin of a good (purchase, payment, cost and value, and production records, for finished good and incorporated materials)

Importers (19 CFR 181.22, 19 USC 1508 (a))

Shall keep for five years from the date of entry all documentation relating to the importation of the good



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NAFTA Certificate of Origin

Providing Records to U.S. Customs – 19 USC 1509

Exporters and Producers

In any inquiry for insuring compliance with U.S. laws, the Secretary may summon upon reasonable notice the person who exported merchandise to a NAFTA country to produce records relevant to such inquiry.

Importers

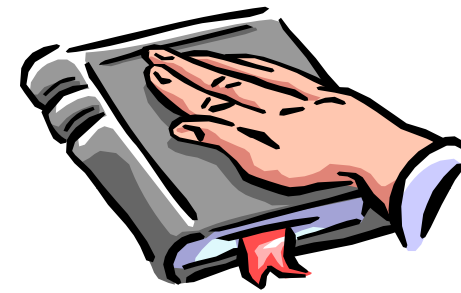
In any inquiry for the purpose of ascertaining the correctness of an entry, the Secretary may examine upon reasonable notice any record relevant to such inquiry.



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NAFTA Certificate of Origin

I certify that:



The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for these goods in the North American Free Trade Agreement.



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NAFTA Certificate of Origin

Customs Form (CF) 434

Required for U.S. exporters and importers, or other such form as approved by the Canadian or Mexican administrations (19 CFR 181.11 and 181.22)

Has become standard Certificate of Origin for NAFTA goods

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
NORTH AMERICAN FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN

Arrived through 1201/96
OMB No. 1515-0044
See back of form for Paper
Work Reduction Act Notice

Please print or type

19 CFR 181.11, 181.22

1. EXPORTER NAME AND ADDRESS

2. BLANKET PERIOD (DDMMYY)

FROM

TO

TAX IDENTIFICATION NUMBER

3. PRODUCER NAME AND ADDRESS

4. IMPORTER NAME AND ADDRESS

TAX IDENTIFICATION NUMBER

TAX IDENTIFICATION NUMBER

5. DESCRIPTION OF GOODS	6. HS TARIFF CLASSIFICATION NUMBER	7. PREFERENCE COUNTRY	8. PRODUCER	9. NET COST	10. COUNTRY OF ORIGIN

I CERTIFY THAT:

- THE INFORMATION ON THIS DOCUMENT IS TRUE AND ACCURATE AND I ASSUME THE RESPONSIBILITY FOR PROVING SUCH REPRESENTATIONS. I UNDERSTAND THAT I AM LIABLE FOR ANY FALSE STATEMENTS OR MATERIAL OMISSIONS MADE ON OR IN CONNECTION WITH THIS DOCUMENT.
- I AGREE TO MAINTAIN AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM IN WRITING ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE.
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11e. DATE (DDMMYY)

11f. TELEPHONE NUMBER

11g. FAX NUMBER

11h. SIGNATURE

11i. ADDRESS

11j. CITY

11k. STATE

11l. ZIP CODE

11m. COUNTRY

11n. COUNTRY OF ORIGIN

11o. COUNTRY OF EXPORT

11p. COUNTRY OF IMPORT

11q. COUNTRY OF TRANSIT

11r. COUNTRY OF DESTINATION

11s. COUNTRY OF RE-EXPORT

11t. COUNTRY OF RE-IMPORT

11u. COUNTRY OF RE-EXPORTATION

11v. COUNTRY OF RE-IMPORTATION

11w. COUNTRY OF RE-EXPORTATION AND RE-IMPORTATION

11x. COUNTRY OF RE-EXPORTATION AND RE-IMPORTATION AND RE-EXPORTATION

11y. COUNTRY OF RE-EXPORTATION AND RE-IMPORTATION AND RE-EXPORTATION AND RE-EXPORTATION

11z. COUNTRY OF RE-EXPORTATION AND RE-IMPORTATION AND RE-EXPORTATION AND RE-EXPORTATION AND RE-EXPORTATION

Customs Form 434 (121792)



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Examples

CF434 NAFTA Certificate

Poor NAFTA Certificate

Fair NAFTA Certificate

Good NAFTA Certificate



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NAFTA Certificate of Origin

Penalties for false statements or omissions:

19 USC 1592

Fraud – Domestic value of the merchandise

Gross Negligence – Lesser of domestic value of merchandise or 4 X duties (40% of value if not dutiable)

Negligence – Lesser of domestic value of merchandise or 2 X duties (20% of value if not dutiable)





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Penalties for failure to provide records:

19 USC 1509

Willful failure – \$100,000 or 75% of the value of the merchandise

Negligence – \$10,000 or 40% of the value of merchandise

Plus underpaid duties

