

NAFTA Tutorial to Completing a Valid NAFTA CERTIFICATE

This tutorial is a step-by-step guide to help you understand how to complete an accurate and valid NAFTA certificate. Examples in this tutorial use the name ABC Exports.

Invalid NAFTA certificates of origin are one of the largest areas of concern for non-compliance. To claim the duty free status, a valid certificate must be on file. Anything less is unacceptable and subject to penalty assessment.

Introduction

The importer is ultimately responsible for having a fully completed and valid NAFTA certificate on file for any goods claiming the duty free rate of duty under NAFTA. Exporters, producers or manufacturers are responsible for determining qualification under NAFTA and completing an accurate certificate. Only importers who possess a valid NAFTA certificate of origin can claim preferential tariff treatment.

Shipment Requirements

Low Value Shipment Requirement

For goods which are valued at less than CDN\$1,600.00, Customs will accept an informal statement of origin which may be handwritten, typed or otherwise indicated on the paperwork.

Example of statement:

STATEMENT OF ORIGIN FOR COMMERCIAL IMPORTATIONS OF LESS THAN CDN \$1,600.00
I certify that the goods referenced in this invoice/sales contract originate under the rules of origin specified for these goods in the North American Free Trade Agreement (NAFTA), and that further production or any other operation outside the territories of the Parties has not occurred subsequent to production in the territories.

NAME: _____

TITLE: _____

COMPANY: _____

STATUS: EXPORTER _____ PRODUCER _____ OF THE CERTIFIED GOODS

TELEPHONE: _____ FAX: _____

COUNTRY OF ORIGIN: _____

(For purposes of determining the applicable preferential rate of duty as set out in Annex 302.2, in accordance with the marking rules or in each Party's schedule of tariff elimination.)

High Value Shipment Requirement

For goods that are valued over CDN\$1600.00, a formal NAFTA certificate is required. Either a NAFTA certificate per shipment, or a blanket NAFTA certificate – covering one calendar year.

The Importance of the NAFTA Certificate

Importers using an invalid NAFTA Certificate of Origin will be denied NAFTA origin duty free status, and duties will be applied retroactively. Duty rates will apply based on the classification number declared at time of import.

Exporters are responsible for determining qualification under NAFTA and for completing an accurate certificate. The importer of record is ultimately responsible for un-remitted duty and GST on imported goods, as well as applicable penalties.

NAFTA: Article 401 – The Rules of Origin

For a good to originate it must meet the requirements set out in the Rules of Origin - Article 401 of the NAFTA Agreement

The NAFTA grants benefits to a variety of goods from the region (Canada, United States and Mexico). For a good to “originate”, it must meet the requirements set out in the Rules of Origin – Article 401 of the Agreement.

Within the context of NAFTA the words origin, originate, or originating are used differently than in the context of determining country of origin.

Article 401 of NAFTA defines originating in four ways:

1. Wholly obtained or produced in the NAFTA region.
2. Goods produced in the NAFTA region wholly from originating materials. Goods taken from the seabed, the soil or the air in the NAFTA territories.
3. Goods meeting the Annex 401 origin rule.
4. Unassembled goods, and goods classified with their parts, which do not meet the Annex 401 rule of origin, but contain 60% regional value content using the transaction method, or 50% using the net cost method.

Goods can originate in Canada, Mexico, or the United States, even if they contain non-originating materials, as long as the materials satisfy the rules of origin specified in Annex 401 of the Agreement.

Tariff Classification

If your goods are initially misclassified, all work done to establish eligibility will be meaningless.

- The rules of origin ensure that parts and materials that do not originate in the NAFTA territory undergo a sufficient amount of processing which then transforms into qualifying products.
- The rules of origin are based on tariff classification, therefore it is important that you have the correct HS tariff classification for the finished product, and any non-originating parts and materials.
- In most cases, the HS tariff classification is required to the six digit level only. For

the purposes of the Rules of Origin, it is important to understand the structure of the tariff.

Example: Tariff classification: 2007.99

20 - First two digits are the chapter
2007 - Third and fourth digits are the header
2007.99 - Fifth and sixth digits are the subheader

Example: Tariff Change

Strawberry jam is manufactured in the United States from sugar that is the product of Jamaica, and strawberries that are the product of Mexico.

The tariff of the finished product, Strawberry Jam is: **2007.99**

The tariff for the sugar (Jamaica): **1701.99**

The tariff item for the strawberries does not need to be determined, since they originate in one of the NAFTA territories.

The rule of origin for tariff 2007.99 reads as follows:

20.01 – 20.07 A change to heading Nos. 20.01 through 20.07 from any other chapter.

Since the **sugar** (Jamaica), is from outside of headings **20.01 through 20.07**; the jam is originating and qualifies under the NAFTA duty free tariff.

Regional Value Content

As well as a required tariff change, the specific rules of origin may ask that a Regional Value Content (RVC) be met. The RVC, which is always expressed as a percentage, may be determined by using one of the following two formulas:

$RVC = \frac{\text{Transaction Value} - \text{Value of Non-Originating Materials}}{\text{Transaction Value}} \times 100$

Transaction Value

OR

$RVC = \frac{\text{Net Cost} - \text{Value of Non-Originating Materials}}{\text{Net Cost}} \times 100$

Net Cost

It is the exporters choice to use either the Transaction Value or Net Cost.

The transaction value must be at least 60% of the value.

The net cost must be at least 50% of the value.

Example – Regional Value Content

Goods of tariff (subheading) 8703.10, are shipped to Canada from Mexico. The transaction value of the goods is \$3,600.00; the net cost of the good is \$3,500.00; and the value of the non-originating material is \$1,495.00.

The Specific rule of origin for 8703.10 states:

8703.10 A change to subheading No. 8703.10 from any other heading number, 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

Assuming the first specific rule of tariff change has been met, the RVC calculation is as follows:

Transaction Value:

$$\text{RVC} = \frac{(\$3600.00 - \$1495.00)}{3600.00} \times 100 = 58\%$$

Must be at least 60%, so it doesn't qualify under this method.

Net Cost

$$\text{RVC} = \frac{(\$3500.00 - \$1495.00)}{3500.00} \times 100 = 57\%$$

Must be at least 50%, so the goods qualify under this method.

Determining Origin Criteria

All goods which qualify under the NAFTA rates of duty, must fall into one of six criteria (must be indicated on field 7 of the Certificate of Origin).

Criterion A – Goods must be “wholly obtained or produced entirely in the territory of one or more of the NAFTA countries”. No foreign materials. For goods of Criterion A, there is no tariff change or Regional Value requirements that must be met.

Criterion B – Goods which are produced entirely in Canada, the United States, or Mexico, and satisfy one of the rules set out in the Annex 401 of the Agreement (change in tariff or regional value content requirements; or combination of the two).

Criterion C – Goods must be produced entirely in the territory of one or more of the NAFTA countries using only originating materials. In this case some of the materials are originating due to the fact that they have undergone a change in tariff and/or RVC.

NOTE: Criterion D, E and F are rarely used, or used in very specific cases only.

NAFTA - Certificate of Origin Form

Field 1 - State the full legal name, address and legal tax identification number of the exporter. Legal tax identification number is: in Canada, employer number or importer/exporter number assigned by Revenue Canada; in the United States, employer's identification number or Social Security Number.

Field 2 - Complete field if the certificate covers multiple shipments of identical goods as described in Field 5, that are imported into a NAFTA country for a specified period of up to one year (blanket period). Certificates can be issued to cover an entire year, or completed for each shipment.

Field 3 - State the full legal name, address and legal tax identification number, as defined in Field 1, of the producer. If you wish this information to be confidential, it is acceptable to state "Available to Customs upon request". If the producer and the exporter are the same, complete field with "SAME". If the producer is unknown, it is acceptable to state "UNKNOWN".

Field 4 - State the full legal name, address and legal tax identification number, as defined in Field 1, of the importer. If importer is not known, state "UNKNOWN", if multiple importers, state "VARIOUS".

Case Example: ABC Exports is the exporter of the goods to Canada, and the number 246810 is their employer's identification number. ABC has made this a blanket certificate

covering the full year. For confidentiality reasons, Field 3 is marked "Available to Customs Upon Request". Because ABC Exports has multiple importers, they mark Field 5 as "Various".

Field 5 - Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (HS) description of the good. If the certificate covers a single shipment of a good, include the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order number.

Field 6 - For each good described in Field 5, identify the HS tariff classification to six digits. If the good is subject to a specific rule of origin in Annex 401 that requires eight digits, identify to eight digits, using the HS tariff classification of the country into whose territory the goods are imported.

Field 7 - For each good described in Field 5, state which criterion (A through F) is applicable. **Refer to Appendix A for a more detailed description.**

Field 8 - For each good described in Field 5, state "YES" if you are the producer of the good. If you are not the producer of the good, state "NO" followed by (1), (2), or (3), depending on whether this certificate was based upon: (1) your knowledge of whether the good qualifies as an originating good; (2) your reliance on the producer's written representation (other than a Certificate of Origin) that the good qualifies as an originating good; or (3) a completed and signed certificate for the good, voluntarily provided to the exporter by the producer.

Field 9 - For each good described in Field 5, where the good is subject to a regional value content (RVC) requirement, indicate "NC" if the RVC is calculated according to the net cost method; otherwise, indicate "NO". If the RVC is calculated according to the net cost method over a period of time, further identify the beginning and ending dates (DD/MM/YY) of that period. (Reference: Articles 402.1, 402.5)

Field 10 - Identify the name of the country ("MX" or "US" for agricultural and textile goods exported to Canada) to which the preferential rate of customs duty applies, as set out in Annex 302.2, in accordance with the Marking Rules, or in each Party's schedule of tariff elimination.

For all other originating goods exported to Canada, indicate appropriately "MX" or "US" if the goods originate in that NAFTA country, within the meaning of the NAFTA Rules of Origin Regulations, and any subsequent processing in the other NAFTA country does not increase the transaction value of the goods by more than 7%; otherwise indicate as "JNT" for joint production.

Case Example: ABC Exports has provided, for Field 5, the part number (X21) and a description on the make of the Widget (steel) to help classify the product. The HS Tariff Classification number for this product is 7326.90. Because the Widget is "wholly obtained or produced entirely" in the US, the preference criterion is A. Since ABC Exports is not the producer of the Widget, we enter in Field 8, "NO" and follow it by a (1) to indicate that to ABC's knowledge the good qualifies as an originating good. Since the widget is not subject to a regional value content (RVC), we indicate "NO" for Field 9. Because US is the country of origin for this good we indicate "US" in Field 10.

Field 11 - This field must be completed, signed and dated by the exporter. When the certificate is completed by the producer for use by the exporter, it must be completed, signed and dated by the producer. The date must be the date the certificate was completed and signed.

Case Example: ABC Exports finishes the NAFTA certificate by going over the statements in Field 11 and indicating the number of pages the certificate consists of and filling in the required info, as they are the exporter. Remember the date must be the date the certificate was completed and signed.

Exporter's Responsibilities

*** NAFTA records must be kept for a period of six years ***

- Exporters or producers that prepare Certificates of Origin must maintain records pertaining to the exportation for a period not less than 6 years.
- Exporters or producers must notify all parties to whom the certificate was given, of any changes that could affect its accuracy or validity.
- Exporters or producers must provide copies of the NAFTA certificate to their own customs administration on request.

Importer's Responsibilities

The importer of record is responsible to keep valid NAFTA certificates on file for a period not less than six years. Shipment specific certificates should be kept with the customs clearance supporting documents and blanket certificates can be filed for the year that they cover. It is the importers responsibility to file any amending entries where goods were entered duty free and they did not qualify, or the status of goods changes. The importer is also responsible to supply Customs with a copy of the NAFTA certificate upon request.

Appendix A – Preference Criteria

Field 7 - Preference Criteria:

A The good is "Wholly obtained or produced entirely" in the territory of one or more of the NAFTA countries, as referred to in Article 415. Note: The purchase of a good in the territory does not necessarily render it "wholly obtained or produced". If the good is an agricultural good, see also criterion F and Annex 703.2. (Reference: Article 401(a) and 415)

B The good is produced entirely in the territory of one or more of the NAFTA countries and satisfies the specific rule of origin, set out in Annex 401, that applies to its tariff classification. The rule may include a tariff classification change, regional valuecontent requirement or a combination thereof. The good must also satisfy all other applicable requirements of Chapter Four. If the good is an agricultural good. see also criterion F and Annex 703.2. (Reference: Article 401(b))

C The good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials. Under this criterion, one or more of the materials may not fall within the definition of "wholly produced or obtained", as set out in Article 415. All materials used in the production of the good must qualify as "originating" by meeting the rules of Article 401(a) through (d). If the good is an agricultural good, see also criterion F and Annex 703.2. (Reference: Article 401(c))

D Goods are produced in the territory of one or more of the NAFTA countries but do not meet the applicable rule of origin, set out in Annex 401, because certain nonoriginating materials do not undergo the required change in tariff classification. The goods do nonetheless meet the regional value-content requirement specified in Article 401(d). this criterion is limited to the following two circumstances:

1. the good was imported into the territory of a NAFTA country in an unassembled or disassembled form but was classified as an assembled good, pursuant to HS General Rule of Interpretation 2(a); or
2. the good incorporated one or more non-originating materials, provided for as parts under the HS, which could not undergo a change in tariff classification because the heading provided for both the good and its parts and was not further subdivided into subheadings, or the subheading provided for both the good and its parts and was not further subdivided.

Note: This criterion does not apply to Chapters 61 through 63 of the HS (Reference: Article 401(d))

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E Certain automatic data processing goods and their parts, specified in Annex 308.1, that do not originate in the territory are considered originating upon importation into the territory of a NAFTA country from the territory of another NAFTA country when the Most-Favoured-Nation Tariff rate of the good conforms to the rate established in Annex 308.1 and is common to all NAFTA countries. (Reference: Annex 308.1)

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 (please specify). A good listed in Appendix 703.B.7 is also exempt from quantitative restrictions and is eligible for NAFTA preferential tariff treatment if it meets the

definition of "qualifying good" in Section A of Annex 703.2. Note 1: This criterion does not apply to goods that wholly originate in Canada or the United States and are imported into either country. Note: A tariff rate quota is not a quantitative restriction