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together

# Free Trade Agreements

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# Free Trade Agreements

- RECENT NEWS:
  - Bilateral Free Trade Agreements [FTA] between the US and South Korea, US and Panama & US and Colombia were signed by President Obama on October 21, 2011
  - These 3 FTAs have not yet been implemented

# Free Trade Agreements

- FTAs are expected to create new opportunities and new jobs for local companies by reducing or eliminating tariffs and other barriers imposed on U.S. goods and services entering foreign markets.

# Free Trade Agreements

- Contrary to urban legend, FTA do not create a “giant sucking sound”.
- They create US jobs.
- This fact is well documented in statistical analyses by independent (non-political) third party data collectors!

# Free Trade Agreements

The FTAs with South Korea, Panama and Colombia extend reciprocal duty preferences and in so doing, level the “playing field”.

Contrast this against unilateral trade preference programs where duty preference is one way – US only!

- Generalized System of Preferences (GSP)
- Caribbean Basin Initiative (CBI)
- Andean Trade Preference Act
- African Growth & Opportunities Act (AGOA)

# Free Trade Agreements

Including FTAs with South Korea, Panama & Colombia  
US has total of 14 FTAs involving 20 countries  
Compare: Mexico has 12 FTAs involving 44 countries!

# Free Trade Agreements

- Reciprocal FTAs to which US is a party:
  - Australia FTA
  - Bahrain FTA
  - CAFTA-DR: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic
  - Chile FTA

# Free Trade Agreements

- Colombia FTA
- Israel FTA
- Jordan FTA
- Korea FTA (KORUS)
- Morocco FTA
- NAFTA: Canada and Mexico

# Free Trade Agreements

- Oman FTA
- Panama TPA
- Peru TPA
- Singapore FTA

# Free Trade Agreements

- General Orientation to FTAs
  - Reciprocal Preferential tariff treatment for participants
    - *Low or no duties on originating goods*
  - Standard tariffs for non-participants
    - *Unique for each participant unless common external tariff*

# Free Trade Agreements

- General Orientation
  - Preferential tariff treatment under FTAs
    - *Permitted exceptions to MFN / NTR under World Trade Organization*

# Free Trade Agreements

- General Orientation
- Preferential tariff treatment under FTAs
  - Must qualify
  - Must claim
  - Not automatic

# Free Trade Agreements

- **General Orientation**
  - **To qualify for Preferential tariff treatment under FTAs**
- **Eligible products**
  - **Phase-Out Schedule**
- **Originating products**
  - **Based on the specific FTAs “origin rules”**

# Free Trade Agreements

- Originating products
- Origin rules
- Treaty-specific
- No universal origin rules
- No harmonized origin rules

# Free Trade Agreements

- Origin Principle #1
  - Wholly product of FTA country
    - *Wholly manufactured*
    - *No imported components*

# Free Trade Agreements

- Origin Principle #2
- Imported components undergo
- Substantial transformation
- Final good has Required % of US content

# Free Trade Agreements

- General Orientation
  - Origin Principle #2
- Required transformation of imported
- components can be:
  - Simple
  - Complex
  - Hybrid

# Free Trade Agreements

- General Orientation
  - Simple transformation of imported components
    - *General rule for all products*
      - No “product-specific” rules
    - *Required Domestic Content % and Substantial transformation*

# Free Trade Agreements

## “Substantial Transformation”

- results when a new and different product is produced that has a name, character and use that are different than those of its constituent materials.

# Free Trade Agreements

- Complex transformation of imported components
  - “product-specific” rules
    - *Example: Change to Harmonized Tariff Schedule [HTS] heading 8501 from any other heading*
  - No general rules

# Free Trade Agreements

- Hybrid transformation of imported components
  - Combination of
  - Simple & Complex

# U.S. Free Trade Agreements

# U.S. Trade Agreements

- Reciprocal FTAs:
  - Fast Track
  - Trade Promotion Authority
    - *As of Oct, 2011 = 14 FTAs + 1*
  - Trans Pacific Partnership [USA + 8 Pacific Rim countries] in negotiation

# U.S. Trade Agreements

- Trade Preference Arrangements
- Reciprocal:
  1. Israel
  2. NAFTA
  3. Jordan
  4. Chile
  5. Singapore
  6. Australia

# U.S. Trade Agreements

- Trade Preference Arrangements
- Reciprocal (cont'd):
  7. CAFTA
  8. Morocco
  9. Bahrain
  10. Oman
  11. Peru

# U.S. Trade Agreements

- Trade Preference Arrangements
- Reciprocal:
  1. Andean
  2. Southern Africa (SACU)
  3. Panama
  4. Republic of Korea
  5. Thailand
  6. Colombia = Trade Promotion Agreement

# U.S. Trade Agreements

## U.S. Israel Free Trade Agreement

# U.S. Trade Agreements

- U.S. Israel Free Trade Agreement
  - (Signed 1985, in full effect as of January 1995)
    - *Bilateral*
    - *Reciprocal*
      - U.S. to Israel
      - Israel to U.S.

# U.S. Trade Agreements

- U.S. Israel FTA (cont'd)
  - Mutual Low Import Duties
  - Mutual Lack of Import Duties
  - Some products excluded

# U.S. Trade Agreements

- U.S. Israel FTA (cont'd)
  - Origin Rules:
    - *Wholly produced in U.S. from U.S components*
    - *Simple transformation in case of imported components: Substantial Transformation & 35% or more U.S./Israel content*

# U.S. Trade Agreements

- U.S. Israel FTA (cont'd)
  - Prescribed Certificate of Origin
  - Substantiation of origin
  - Direct import

# U.S. Trade Agreements

## *North American Free Trade Agreement*

### *(NAFTA)*

# U.S. Trade Agreements

- North American Free Trade Agreement (NAFTA)
  - Multilateral agreement signed 1994
    - *Geographic Region*
      - Canada
      - U.S.A.
      - Mexico

# U.S. Trade Agreements

- North American Free Trade Agreement (NAFTA) – cont'd
  - Reciprocal
    - *Canada to U.S. & Mexico*
    - *U.S. to Canada & Mexico*
    - *Mexico to Canada & U.S.*

# U.S. Trade Agreements

- North American Free Trade Agreement (NAFTA) – cont'd
  - Free Trade Agreement
    - *Mutual Lack of Import Duties*
      - (Tariffs on all products completely phased out)

# U.S. Trade Agreements

- North American Free Trade Agreement (NAFTA) – cont'd
  - Origin Rules
  - Wholly Grown in US
    - *Preference Criteria A*

# U.S. Trade Agreements

- North American Free Trade Agreement (NAFTA) – cont'd
  - Origin Rules
  - Wholly Produced in US from
    - *U.S. components or*
    - *components that have become US components through NAFTAization*
    - *Preference Criteria C*

# U.S. Trade Agreements

- North American Free Trade Agreement (NAFTA)
  - Origin Rules
  - Complex transformation when imported components
  - Non-NAFTA materials undergo Tariff
  - Shift / HTS # Changes
    - *Some cases: specific regional value content*
    - *Preference Criteria B*

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# U.S. Trade Agreements

- North American Free Trade Agreement (NAFTA)
  - Originating Goods
    - *Substantiation of origin*
      - Vendor Certifications with Preference Criteria C
      - Prescribed Certificate of Origin

# U.S. Trade Agreements

North American Free Trade Agreement  
CERTIFICATE OF ORIGIN

*Please print or type*

1. Exporter Name & Address  Tax ID Number:		2. Blanket Period (DD/MM/YR) From:  To:			
3. Producer Name & Address  Tax ID Number:		4. Importer Name & Address  Tax ID Number:			
5. Description of Good(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 responsibility for providing such representations. I understand that I am liable for					

# U.S. Trade Agreements

## *Jordan Free Trade Agreement*

# U.S. Trade Agreements

- U.S.-Jordan Free Trade Agreement (Signed October 2000)
  - Bilateral
  - Reciprocal
    - *U.S. to Jordan*
    - *Jordan to U.S.*

# U.S. Trade Agreements

- U.S.-Jordan Free Trade Agreement
  - Mutual Low Import Duties
  - Mutual Lack of Import Duties
  - Some products excluded (until complete tariff elimination in 2010)
  - No prescribed origin certificate

# U.S. Trade Agreements

- U.S.-Jordan Free Trade Agreement
  - Origin Rules
    - *Wholly produced in U.S. from U.S. components*

# U.S. Trade Agreements

- U.S.-Jordan Free Trade Agreement
  - Origin Rules
  - Simple transformation when imported components
    - *Produced in U.S. from foreign materials that:*
      - Have undergone substantial transformation; and
      - Contain at least 35% or more U.S. content
      - Wholly produced in U.S. from U.S. components

# U.S. Trade Agreements

## *Chile* *Free Trade Agreement*

# U.S. Trade Agreements

- U.S.-Chile Free Trade Agreement (Signed Jan. 2004)
  - Bilateral
  - Reciprocal
    - *U.S. to Chile*
    - *Chile to U.S.*

# U.S. Trade Agreements

- U.S.-Chile Free Trade Agreement
  - Mutual Low Import Duties
  - Mutual Lack of Import Duties
    - *85% of consumer / industrial products already tariff-free; remaining products tariff-free by 2016*

# U.S. Trade Agreements

- U.S.-Chile Free Trade Agreement
  - Origin Rules
    - *Wholly obtained in U.S.*
    - *Wholly produced in U.S. from U.S. components*

# U.S. Trade Agreements

- U.S.-Chile Free Trade Agreement
  - Origin Rule
  - Complex transformation when imported components
    - *Non-originating materials undergo tariff shift/change in classification*

# U.S. Trade Agreements

## *Singapore Free Trade Agreement*

# U.S. Trade Agreements

- U.S.-Singapore Free Trade Agreement (Signed Dec. 2003, in effect as of Jan. 1, 2004)
  - Bilateral
  - Reciprocal
    - *U.S. to Singapore*
    - *Singapore to U.S.*
  - No prescribed origin certificate

# U.S. Trade Agreements

- U.S.-Singapore Free Trade Agreement
  - Mutual Low Import Duties
  - Mutual Lack of Import Duties
  - Most consumer/industrial products already tariff-free; remaining products tariff-free by 2014

# U.S. Trade Agreements

- U.S.-Singapore Free Trade Agreement
- Origin Rules
  - Wholly obtained in U.S.
  - Wholly produced in U.S. from U.S. components

# U.S. Trade Agreements

- U.S.-Singapore Free Trade Agreement
- Origin Rules
- Complex transformation when imported components
  - Satisfy the requirements of Annex 3A in FTA which is a tariff shift/change in classification type rule

# U.S. Trade Agreements

## **CAFTA** ***(Central America)***

# U.S. Trade Agreements

- CAFTA
  - Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua
  - Dominican Republic (as of March 15, 2004)

# U.S. Trade Agreements

- CAFTA
  - 80% of consumer / industrial goods will become duty free upon implementation
  - remainder to be duty-free within 10 years (15 years for some farm products)
  - No prescribed origin certificate

# U.S. Trade Agreements

- CAFTA Rules of Origin:
  - Wholly obtained in U.S.
  - Wholly produced in U.S. from U.S. components

# U.S. Trade Agreements

- CAFTA Rules of Origin:
  - Complex when imported components
    - *Non-originating materials must undergo change in tariff classification*
    - *Satisfy RVC*

# U.S. Trade Agreements

## Australia Free Trade Agreement

# U.S. Trade Agreements

- Australia Free Trade Agreement
  - Most consumer/industrial goods will be duty free upon implementation.
  - Remainder to be duty free within 10 years
  - No prescribed origin certificate

# U.S. Trade Agreements

- Australia Free Trade Agreement
- Rules of Origin:
  - Wholly obtained in U.S.
  - Wholly produced in U.S. from U.S. components
  - Complex when imported components
    - *Non-originating materials must undergo a change in tariff classification*

# U.S. Trade Agreements

## Morocco Free Trade Agreement

# U.S. Trade Agreements

- Morocco Free Trade Agreement
  - Signed March 2, 2004.
  - Upon implementation, 95% of bilateral trade in consumer/industrial goods will become tariff-free. Remaining tariffs to be eliminated within 9 years.
  - No prescribed origin certificate

# U.S. Trade Agreements

- Morocco FTA: Origin Rules
  - Wholly produced in U.S. from U.S. components
  - Hybrid when imported components
    - *Tariff shift for specified products*
    - *Simple for all other products*
      - Substantial transformation; and 35% or more U.S. content

# U.S. Trade Agreements

## Bahrain Free Trade Agreement

# U.S. Trade Agreements

- Bahrain Free Trade Agreement
  - Signed September 14, 2004.
  - Upon implementation, 100% of bilateral trade in consumer/industrial goods will become tariff-free.
  - No prescribed origin certificate

# U.S. Trade Agreements

- Bahrain FTA: Origin Rules
  - Wholly produced in U.S. from U.S. components
  - Hybrid when imported components
    - *Tariff shift for specified products*
    - *Simple for all other products*
      - Substantial transformation; and 35% or more U.S. content

# U.S. Trade Agreements

## Oman Free Trade Agreement

# U.S. Trade Agreements

- Oman Free Trade Agreement
  - Signed January 19, 2006.
  - Upon implementation, 100% of bilateral trade in consumer/industrial goods will become tariff-free.
  - No prescribed origin certificate

# U.S. Trade Agreements

- Oman FTA: Origin Rules
  - Wholly produced in U.S. from U.S. components
  - Hybrid when imported components
    - *Tariff shift for specified products*
    - *Simple for all other products*
      - Substantial transformation; and 35% or more U.S. content

# U.S. Trade Agreements

## Peru Free Trade Agreement

# U.S. Trade Agreements

- Peru Free Trade Agreement
  - Completed December 2005.
  - Upon implementation, 80% of bilateral trade in consumer/industrial goods will become tariff-free. Remaining tariffs to be eliminated within 10 years.
  - No prescribed origin certificate format

# U.S. Trade Agreements

- Peru FTA: Origin Rules
  - Wholly produced in U.S. from U.S. components
  - Complex when imported components
    - *Tariff shift for specified products*

# U.S. Trade Agreements

## South Korea Free Trade Agreement

# U.S. Trade Agreements

- South Korea FTA signed by President October 21, 2011
- Not yet implemented
- Date not certain when FTA will be implemented

# U.S. Trade Agreements

- South Korea FTA
- 95% of US-Korea trade in consumer & industrial products will become duty free within 5 years of the date when the FTA enters into force
- Most remaining tariffs eliminated within 10 years
- Many services are covered

# U.S. Trade Agreements

- Korea FTA Rules of Origin:
- A good “originates” in the territory of one of the parties and, thus qualifies for preferential treatment, if it is either:
  - (1) wholly obtained or produced in one of the countries,
  - (2) wholly produced in either country only from originating materials or
  - (3) produced entirely in the territory of either country and (a) the non-originating materials used in producing the good undergo a “tariff shift” (a change in classification) or (b) the good satisfies the regional value content requirement under the FTA.

# U.S. Trade Agreements

- Under option (3)(a) above, if a non-originating material used in production of a good does not undergo the required “tariff shift,” a good may nonetheless still be considered “originating” if the good satisfies the “De Minimis Rule.”
- De Minimis Rule allows a good to continue to qualify as “originating” even if it consists of non-originating materials, but only if the amount of non-originating material used in manufacturing the product does not exceed 10%.

# U.S. Trade Agreements

- South Korea FTA
- No prescribed origin certificate format
- Must keep records for 5 years to substantiate claims

# U.S. Trade Agreements

## Panama Free Trade Agreement

# U.S. Trade Agreements

- Panama FTA signed by President October 21, 2011
- Not yet implemented
- Date not certain when FTA will be implemented

# U.S. Trade Agreements

- Panama FTA
- Over 87% of US exports of consumer & industrial products to Panama will become duty-free immediately, e.g.
  - IT equipment, agricultural & construction equipment, aircraft & parts, medical & scientific equipment, environmental products, pharmaceuticals, fertilizers, & agro-chemicals.
- Remaining tariffs on US exports phased out over 10 years
- Many services are covered

# U.S. Trade Agreements

- Panama FTA
- US agricultural exports will benefit – with 56% of current trade to receive immediate duty free treatment
- Remaining agricultural tariffs to be eliminated over 15 years
- Rules of Origin - Same as Korea FTA

# U.S. Trade Agreements

- Panama FTA
- No prescribed origin certificate format
- Must keep records for 5 years to substantiate claims

# U.S. Trade Agreements

## Colombia Free Trade Agreement

# U.S. Trade Agreements

- Colombia FTA signed by President October 21, 2011
- Not yet implemented
- Date not certain when FTA will be implemented

# U.S. Trade Agreements

- Colombia FTA
- 80% of US exports of consumer & industrial products to Colombia will become duty free immediately, e.g. –
  - agriculture & construction equipment, aircraft & parts, fertilizers & agro-chemicals, IT equipment, medical & scientific equipment, wood
- Remaining tariffs phased out over 10 years
- Many services are covered

# U.S. Trade Agreements

- Colombia FTA
- US agricultural exports will benefit – with 50% of current trade to receive immediate duty free treatment
- Remaining agricultural tariffs to be eliminated over 15 years
- Rules of Origin - Same as Korea FTA

# U.S. Trade Agreements

- Colombia FTA
- No prescribed origin certificate format
- Must keep records for 5 years to substantiate claims

# NAFTA & DR-CAFTA

- Preferential tariffs for FTA countries
  - Low or no duties -- Reciprocal
- Standard tariffs for non-FTA countries
  - Unique for each participant
  - No common external tariff
- Chile FTA and Peru FTA

# NAFTA & DR-CAFTA

- Preferential tariff treatment
  - Not automatic
  - Must qualify
  - Must claim
  - Must substantiate, if requested
  - Should evaluate cost-effectiveness

# NAFTA & DR-CAFTA

## Preferential tariff treatment Qualification

# NAFTA & DR-CAFTA

- Qualifications / Requirements:
- Preferential tariff treatment
  - No transshipments
  - No additional non-FTA processing
  - Eligible or “originating” products
    - *NAFTA origin rules*
    - *DR-CAFTA origin rules*

# NAFTA & DR-CAFTA

- Origin rules = Treaty-specific
  - No universal origin rules
  - No harmonized origin rules
- NAFTA origin rules
- DR-CAFTA = Modified NAFTA
- Product specific
  - Not substantial transformation

# NAFTA & DR-CAFTA

- Product Specific Principle #1
  - Wholly obtained or produced
    - *Grown*
    - *Produced from grown*
    - *Derived from grown*
    - *No imported content*

# NAFTA & DR-CAFTA

- Product Specific Principle #2
  - Product contains imported materials
    - *De-Minimis amount*
      - NAFTA: 7%
      - DR-CAFTA: 10%
      - (FOB shipping point)

# NAFTA & DR-CAFTA

- Product Specific Principle #2 (cont'd)
  - Product contains imported materials
    - *Specified tariff-shift*
      - HTS Chapters
      - HTS headings
      - HTS subheadings

# NAFTA & DR-CAFTA

- Product Specific Principle #2 (cont'd)
  - Product contains imported materials
    - *Specified tariff-shift and RVC*
      - Net Cost (NC)
      - Transaction Value (TV)

# NAFTA & DR-CAFTA

- Product Specific Principle #2 (cont'd)
  - Product contains imported materials
    - *RVC in absence of tariff-shift*
    - *Focus is always on product!*
    - *Correct HTS is key determination*

# NAFTA & DR-CAFTA

- Product Specific Origin Principle #3
  - Product contains only “originating” materials
    - *Original form*
    - *Transformed imported materials*

# NAFTA & DR-CAFTA

## Preferential tariff treatment Claim

**NAFTA Origin Certificate**

**DR-CAFTA Origin Format**



# NAFTA & DR-CAFTA

## Preferential tariff treatment Substantiation Records

# NAFTA & DR-CAFTA

## Preferential tariff treatment Evaluation Cost versus Benefit?

# Preferential Duty Program: NAFTA

- NAFTA = North American Free Trade Agreement
  - Provides Preferential trade treatment for goods and services between and among United States, Canada, and Mexico
  - To receive benefits, goods must be deemed “originating” from the NAFTA territory

# NAFTA Rules of Origin

## Rule “A”

- The article is “wholly obtained or produced” entirely in the territory of one or more NAFTA countries
  - *“wholly obtained or produced” as used in Rule “A” means mined, grown or harvested. Excludes manufactured product from non-originating materials.*

# NAFTA Rules of Origin: PREFERENCE RULE 401(a)

- Is the article “wholly obtained or produced entirely” in the territory of one or more of the NAFTA parties (Rule A)?
  - “Wholly obtained or produced entirely” means 100% of the article is:
    - *mined or extracted*
    - *harvested*
    - *born and raised, etc...*

# NAFTA Rules of Origin

## Rule “B”

- The good is produced entirely in the territory of one or more NAFTA parties and satisfies the specific rule of origin test set out in Annex 401 (General Note 12T HTSUS)
  - *May involve a tariff classification change, regional value content requirement, or a combination of both*

# NAFTA Rules of Origin: PREFERENCE RULE 401(b)

If the article contains non-NAFTA originating materials, does each of the non-originating materials satisfy:

- The conditions of Annex 401 (General Note 12t of the Harmonized Tariff Schedules) by undergoing the applicable change in tariff classification as a result of a production which occurs entirely in the territory of one or more of the NAFTA countries and / or
- Any Regional Value Content Requirements set out therein?

N.B.: Article may still qualify under de minimis rule (non-originating components may not exceed 7% in value of finished good) even if not all materials undergo requisite tariff shift

# NAFTA Rules of Origin

## Rule “C”

- The good is produced entirely in the territory of one or more NAFTA parties from “originating materials.”
  - *An originating material is one that is a manufactured product from non-originating materials that has become originating by reason of rules “A” through “D.”*

# NAFTA Rules of Origin: PREFERENCE RULE 401(c)

- Is the article made exclusively from originating materials (Rule C)?
  - Under NAFTA Rule 401(c) Materials “originate” when:
    - *Material is wholly obtained or produced in one or more of the NAFTA countries (see Rule A) or*
    - *Material undergoes the applicable change in tariff classification as a result of a production which occurs entirely in the territory of one or more of the NAFTA countries, and/or satisfies any Regional Value Content Requirements (See Rule B)*

# NAFTA Rules of Origin: PREFERENCE RULE 401(c)

## Explanation of Preference Criteria C

- A non-originating material is used to create an intermediate component which is later incorporated into the end item.
- The intermediate material is the “originating” material if it has a different tariff classification for the material from which it was produced

(See Rule B)

# NAFTA Rules of Origin

## Rule “D”

- The good is produced in the territory of one or more NAFTA parties but does not meet the applicable rule of origin because the non-originating material does not undergo a required change in tariff classification because either:
  - The good was imported into the territory in an unassembled condition but was classified as the assembled article by reason of GRI 2(a) or;
  - One or more non-originating components do not undergo a change in tariff classification because the tariff heading or subheading provides for both the good and its parts
  - The finished article meets the regional value content (RVC) of 60% transaction value or 50% net cost method

# NAFTA Rules of Origin: PREFERENCE RULE 401(d)

- Certain articles which contain non-originating materials that do not undergo a change in tariff classification may still qualify for NAFTA treatment when
  - the article was imported into the NAFTA country of production in an unassembled or disassembled form and was classified as the assembled article per HTS GRI 2(a)
  - the finished article and the non-originating material are classified under the same tariff heading or subheading and
    - *the material is classifiable as a “part” of the completed article*
    - *the “regional value-content” rule is satisfied*

# NAFTA Rules of Origin: *Regional Value Content Rules*

- A Regional Value Content Applies only when the specific rules of origin set out in Annex 401 (General Note 12(t)) require it or for Rule 401(d)
- General Regional Value Content
  - 60% using a Transaction Value Method
  - 50% using Net Cost Method (cost of production)

# Determining NAFTA Origin

## Regional Value Content Requirements

- A RVC is required only when it is stated as a condition of Annex 401
- Sometimes, RVC is an alternative to qualification if the change in tariff classification cannot be met
- Under NAFTA RVC can be determined under two alternative methods
  - *Transaction value*
  - *Net Cost Method*
  - *Generally, Exporters have a choice of which method they wish to use.*

# NAFTA Rules of Origin: Regional Value Content Rules

- Exporters or Producers have a choice of either method to qualify goods, unless
  - There is no transaction value
  - The good is sold by the producer to a related party and there is insufficient unrelated sales of identical or similar goods
  - the article is a motor vehicle or parts thereof specified on Annex 403.1
  - The goods are footwear classified in subheadings 6401.10 -6406.10
  - The Exporter or Producer chooses to accumulate the regional value content of the materials used to produce the good

# NAFTA Regional Value Content Rules: Transaction Value Method Defined

- The price actually paid or payable to the PRODUCER of the good, plus
  - ☑ Packing costs, selling commissions, royalty or license fees, proceeds of an subsequent sale or use
  - ☑ All assists, including materials and components, tooling, dies and molds; merchandise consumed during production; technical assistance and services

# NAFTA Regional Value Content Rules: Net Cost Method Defined

- Calculate total cost incurred with respect to the good, and subtract
  - ☑ Sales promotion
  - ☑ Marketing
  - ☑ After-sales service
  - ☑ Payments for royalties, licenses fees and technical assistance and other intangibles (unless incurred in the NAFTA territory)
  - ☑ Shipping and packing costs
  - ☑ Non-allowable interest costs included in total cost

# NAFTA Regional Value Content Rules: Valuation of Materials Used in Production Of A Good

- When valuing materials used to produce a good, Article 402(9) provides for
  - ☑ Transaction value, or if inappropriate
  - ☑ Transaction value of identical or similar merchandise, computed value or deductive value
- Additions
  - ☑ Freight, insurance and all other transportation costs to place of production
  - ☑ Customs duties, taxes and brokerage fees
  - ☑ Cost of waste and spoilage
- Indirect materials are always treated as originating
- Retail packaging must be included in cost of good

# Fungible Goods & Materials

- Where originating and non-originating **fungible** goods are commingled and exported in the same form the determination may be made on the basis of inventory management methods.
- Where originating and non-originating **fungible** materials are used in the production of a good the determination of whether the materials are originating need not be made through identification of any specific fungible material but may be determined on the basis of inventory management methods.
- Fungible = goods or materials that are interchangeable for commercial purposes and whose properties are essential identical.

# Determining NAFTA Origin

## **Example (Heading 8472: other office machines): 206.**

- A.** A change to heading 8472 from any other heading, except from heading 8473; or
- B.** A change to heading 8472 from heading 8473, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:
  - 1. 60 percent where the transaction value method is used, or
  - 2. 50 percent where the net cost method is used.

# NAFTA Rules of Origin

## The De Minimis Rule

- Up to 7% of the value of a good may consist of non-originating materials that do not satisfy the change in classification requirement of Annex 401
- De minimis rule does not apply to dairy products, food stuffs, home appliances such as stoves and trash compactors and some printed circuit board assemblies for telephone systems

# NAFTA Regional Value Content Rules: De Minimis Content (NAFTA Article 405)

- Up to 7% of the transaction value of a Good, or if transaction value is unacceptable, 7% of the total cost of the good may be derived from non-originating materials
- De minimis rule does not apply to dairy products, food stuffs, home appliances such as stoves and trash compactors and some printed circuit board assemblies for telephone systems

# Claiming NAFTA

## Certificates of Origin

- To claim NAFTA benefits, importer must be in possession of properly executed Certificate of origin, unless value of shipment is less than \$2000
- If Certificate of Origin is unavailable, importer may retroactively claim NAFTA benefits for up to one year following importation
- Executing Certificate of Origin:
  - *A certificate of Origin may be issued by the exporter on the basis of*
    - Actual knowledge that the good qualifies
    - Reasonable reliance on the producer's written representation that the good qualifies
    - A properly completed and signed certificate from the producer of the good

# Claiming NAFTA

## Certificates of Origin

- To claim NAFTA benefits, importer must be in possession of properly executed Certificate of origin, unless value of shipment is less than \$2000
- If Certificate of Origin is unavailable, importer may retroactively claim NAFTA benefits for up to one year following importation
- Executing Certificate of Origin:

*A certificate of Origin may be issued by the exporter on the basis of*

- Actual knowledge that the good qualifies
- Reasonable reliance on the producer's written representation that the good qualifies
- A properly completed and signed certificate from the producer of the good

# NAFTA Verifications and Penalties

- **All NAFTA Claims are subject to Verification**
  - NAFTA claim may be rejected if verification finds that goods do not qualify or if there is insufficient information to validate claim
  - Importer responsible for payment of all duties and fees associated with the rejected claim(s)
- **NAFTA Penalties**
  - Failure to produce NAFTA Certificate upon request
    - *1509 Record-keeping Penalty of up \$10,000 per use of record*
    - *False statement penalty under § 1592*
    - *Loss of duty privilege*
  - Exporter Penalties
    - *19 U.S.C. 1592(f) provides penalties against exporters that negligently or intentional prepare “false” certificates of origin*
    - *Penalty is based on the amount of revenue lost (2X, 4X or 100%)*
    - *Record-keeping penalty of up to \$10,000 for failure to maintain records to substantiate issuance of NAFTA certificate*

# Preparation & Presentation Of NAFTA Certificates

- Importer's Obligation:
  - ☑ Have in its possession at the time of importation or presentation of claim an original, duly signed NAFTA certificate of origin completed by the exporter.
  - ☑ Present same to Customs Administration of importing country upon request
  - ☑ Certificate not required for commercial and non-commercial shipments whose value does not exceed \$1000.00 or its equivalent in the currency of the party

# Preparation & Presentation Of NAFTA Certificates

- Exporter's obligations
  - ☑ Present to importer a completed and signed certificate of origin for goods to which claim relates
  - ☑ Where exporter is not producer, exporter may only sign certificate on the basis of:
    - *actual knowledge that good qualifies as an originating good*
    - *reasonable reliance on producer's written representation that good qualifies as an originating good*
    - *a completed and signed Certificate of Origin voluntarily signed by producer*

# Preparation & Presentation Of NAFTA Certificates

- Exporter's & Producer's Obligations
  - ☑ Exporter & producer must provide a copy of Certificate to its Customs Administration upon request
  - ☑ Notify in writing persons to whom certificate was given of any changes that could affect the accuracy or validity of certificate

# Completion of Certificate of Origin

- Form requires sufficient description of good to relate it to invoice and HTS description and code.
- Preference criterion for each good must be stated (i.e., “A”, “B” or “C”, etc.)
- Producer column-- state “yes” if producer and “no” followed by a “1”, “2” or “3” to designate basis for knowledge of eligibility.
- Net Cost column-- If good is subject to RVC, use “NC” to designate net cost method. Otherwise indicate “NO.”
- If producer but not exporter insert name of exporter or leave blank
- If exporter and not producer, identify name of producer.

# Single vs. Blanket Certificates

- Unless otherwise designated, a certificate applies to a single importation to which the claim relates.
- “Blanket” certificates can apply to multiple importations of identical goods which occur within a specific period (not to exceed 12 months)
  - The importation of a good for which preferential treatment is claimed under a blanket certificate must occur between the dates designated as covered by the blanket certificate.

# U.S. NAFTA Penalties

- U.S. Party that complete an incorrect NAFTA Certificate of Origin is subject to a penalty under 19 U.S.C. 1592(f):
  - *It is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin... that a good to be exported to a NAFTA country... qualifies under the rules of origin*
- False claims- Penalty based on level of culpability
  - negligence = 2 x duty preference
  - gross negligence = 4 x duty preference
  - fraud = Domestic value
- Recordkeeping violations: \$10,000.00/\$100,000.00

# Record Keeping Requirements: Article 505

- Exporter/ Producer is required to maintain for five
- years from date of signature of certificate all records
- relating to the origin of the goods to which certificate
- relates, including:
  - purchase records for good exported
  - purchase records for materials used in production of good exported
  - production and inventory records for good and materials used in production of good exported

# Origin Verifications / Audits

- Importing country may conduct verification of claim by:
  - ❖ submission of written questionnaires to exporter or producer in territory of another party
  - ❖ visit premises of exporter or producer to review records referred to in Article 505

# Stump the Lawyer

- QUESTIONS?



# Contact Information

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