

*What Every Member of the
Trade Community Should Know About:*

NAFTA (the North American Free Trade Agreement) for Textiles and Textile Articles



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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division, ORR, is a study of the NAFTA status of textile products. “NAFTA (the North American Free Trade Agreement) for Textiles and Textile Articles” provides guidance regarding the status of imported merchandise under NAFTA. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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I. INTRODUCTION: DETERMINING NAFTA BENEFITS

A. “The Big Picture”

Before getting into the details, we will first step back and look at the “Big Picture” of NAFTA benefits and how to determine which ones apply to your goods. After we understand what each of the rules are used for, we will look at the rules themselves in detail, as they apply to textiles. At the end of this section is a flowchart that helps you to decide what you need to know about your particular textile product and how in general it is affected by NAFTA.

B. Originating Goods

The first thing we might need to know is whether the goods are originating as defined in the NAFTA Rules of Origin, as implemented in General Note 12, Harmonized Tariff Schedule of the United States Annotated (HTSUSA) (sometimes called NAFTA preference rules). If the goods are originating, then the applicable duty rate (Mexico or Canada) will depend on what the NAFTA Agreement calls the “Marking Rules.” Section 102.21 of the CR¹ officially calls them the “Rules of Origin,” but in this publication we will refer to them as the “Marking Rules.”

C. Other Benefit Programs

At the same time, you may also wish to consider whether the goods qualify under the Mexican Special Regime, a special program for certain goods assembled in Mexico from U.S. formed and cut components (see section 4 for details). If they do qualify for this program, they are free of duty, regardless of whatever all the other rules say. Mexican Special Regime may provide benefits in cases where the goods are not found to be t NAFTA-originating.

If the goods are non-originating, there is still another benefit that might apply - Tariff Preference Levels (TPLs). Under these rules, goods will be entitled to the NAFTA reduced duty rates, until a numerical limit of imports is reached.

Now that we have this overview of the various rules that can apply to textiles, we will take a closer look at each of them.

¹ CR refers to the Customs Regulations of the United States, which are codified in title 19, Code of Federal Regulations (19 CFR). The CR is a loose-leaf bound publication, while title 19 CFR is a soft-covered bound publication. See “Additional Information” section for ordering information.

II. NAFTA RULES OF ORIGIN

A. NAFTA Rules of Origin (Overall)

First, just to put things in perspective, let's look at the overall Rules of Origin for all goods, from Article 401 of the NAFTA. The rules are not sequential; the producer can pick and choose among the four of them. We refer to them, based on their designations in the Agreement, as **Rules A, B, C** and **D**, because those letters must be used to complete the NAFTA Certificate of Origin; however, we will use the text from General Note 12 of the HTSUSA. First consider **Rule A**, which corresponds to HTSUSA General Note 12(b)(i):

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States;

“Not one atom of foreign material” is one way to remember this rule, although that would be oversimplifying (there are certain exceptions for waste and scrap and used goods).

Next is **Rule B**, which corresponds to HTSUSA General Note 12(b)(ii):

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that--

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note

This is the rule we might use when there are some foreign (or non-originating) materials involved. It requires us to check the “Specific Rules of Origin,” which are listed under HTSUSA general Note 12(t) by the HTSUSA number for the good, to see what changes in tariff classification must have occurred for the good to qualify. These rules differ from product to product. Some of them require just a change in tariff classification such as from one heading to another or from one chapter to another. Other rules have a change in tariff classification plus a specified percentage of Regional Value Content, or value added within the Territory. We'll look at them more closely later in this section.

Next is **Rule C**, which corresponds to HTSUSA General Note 12(b)(iii):

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

This rule is used when there are some foreign materials involved, but those materials underwent changes required by **Rule B** to become an intermediate (NAFTA originating) product which in turn was made into the final good.

Finally there is **Rule D**, which is very rare and applies only to goods assembled from kits and to certain goods which are classified in the same provision as their parts. They can still qualify if they meet certain RVC requirements. **Rule D** corresponds to HTSUSA General Note 12(b)(iv), which reads as follows:

(iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the non-originating materials falling under provisions for “parts” and used in the production of such goods does not undergo a change in tariff classification because--

(A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or

(B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,

provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note. For purposes of this note, the term “material” means a good that is used in the production of another good, and includes a part or an ingredient.

Notice the very limited circumstances under which this rule applies. Notice particularly the exclusions for HTSUSA Chapters 61 through 63.

B. “Tailoring” the Rules of Origin for Textiles

Now that we're talking about just textiles of HTSUSA Section XI, let's simplify these rules. The only ones that might apply to textiles are:

A. Wholly obtained or produced

An example would be cotton grown in Mexico, or a sweater made entirely in the NAFTA territory from cotton grown in Mexico.

B. Foreign materials meet tariff change rules (but note that none of the textile rules involve Regional Value Content).

We will see many examples of this rule later in this chapter. It is important to note at this point that no matter how much value has been added to foreign materials in the NAFTA territory, the good will not meet this rule unless it undergoes the specified change in tariff classification. The amount of “value added” is irrelevant for textiles.

C. Made entirely from originating materials.

If the exporter can prove that all of the materials used to make the goods were already originating (i.e., each material became an originating NAFTA good on its own), there is no need to worry about satisfying the tariff change rule for the finished good.

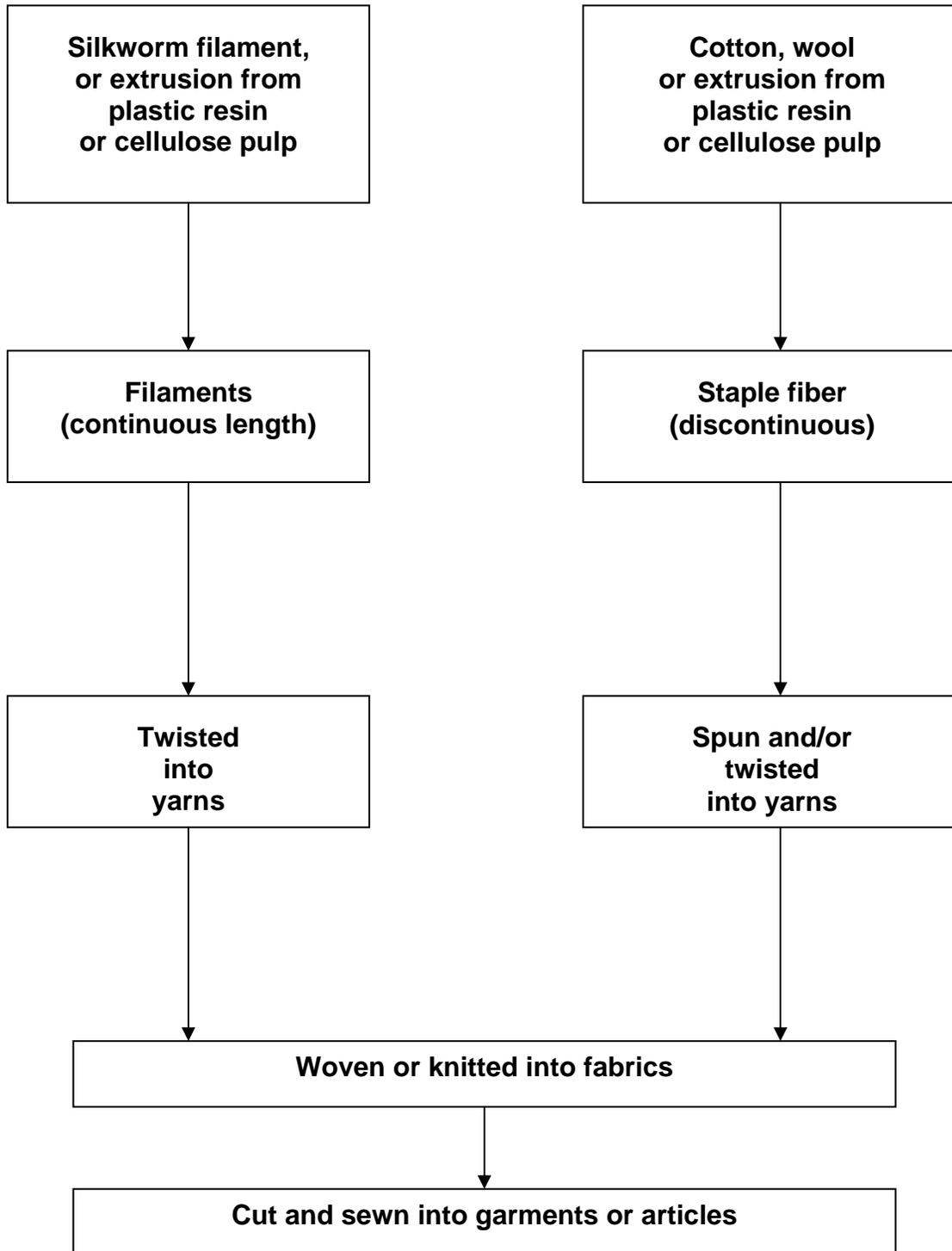
Note that Rule D does not apply to chapters 61-63. And since it involves parts, it is unlikely to apply very often to chapters 50-60, since few, if any, products in those chapters (primarily fibers, yarns and fabrics) would ever involve parts. So, for practical purposes, we will also cross **Rule D** off our list.

There are other things to remember about the basic Rules of Origin:

- For textile goods classified in Chapters 50 through 63, the de minimis rule allows a good to qualify as originating, as long as the fibers or yarns that fail the required tariff change are not more than 7% of the weight of the component that determines the tariff classification.
- Also remember that for all products, disregard shipment packing and retail packing in considering whether a good underwent the required tariff changes.

Now let's take a look at different textile product groups and see how they are treated by the Specific Rules of Origin (the ones that **Rule B** refers to).

BASIC STEPS IN TEXTILE PRODUCTION



C. Four Basic Types of Specific Rules for Textile Products

Generally, as shown in the chart on the previous page, the manufacturing progression in the textile sector is: fibers are made into yarns, yarns are made into fabric, fabric is cut into components, and cut components are sewn to complete finished articles or garments. Let's look at each of these stages and see how they are treated under the Rules of Origin.

The terms “fiber forward,” “yarn forward,” and even “fabric forward” are popular, shorthand ways of discussing the basic Rules of Origin for textile and apparel goods. It is important to note that there are no legal definitions of these terms in the Agreement. These are concepts which apply to various textile sectors; they are not rules. As we discuss Rules of Origin for the following broad sectors of textile products, we will be using these terms to help understand the intent of the agreement. *But please do not treat these concepts as “rules” when making decisions about whether a good originates. There are just too many exceptions to these concepts for us to rely on them!*

Keeping that stern warning in mind, it is still helpful to define these terms, because almost all of the Rules of Origin for textiles fit one of these four types. So it's a good shorthand way to describe a given rule.

- A “Fiber Forward” rule would be one that requires that the fiber must be formed in the NAFTA territory. In the case of natural fibers, such as wool or cotton, it would mean that they would have to be grown in the territory. In the case of man-made fibers, it would mean that they would have to be extruded in the territory.
- A “Yarn Forward” rule would be one that requires that the yarn must be formed in the territory, i.e., it would mean that the yarn must be spun (or in the case of filament yarn, extruded) within the territory.
- A “Fabric Forward” rule would require that the fabric must be formed (usually knitted or woven) in the territory.
- A “Cut and Sewn” rule would require only that cutting and sewing of the finished article occur in the territory.

As we go through the Specific Rules we will see instances of each of these types.

D. Specific Rules Pertaining to Yarns

There is a “fiber forward” approach for most cotton and man-made fiber spun yarn and sewing thread. This means that the fiber itself must be created in the NAFTA territory. Filament yarns must be composed of filaments that are formed or extruded in a NAFTA country, but petrochemical or cellulosic feedstock that is used to make the filaments may be sourced outside NAFTA. Wool, silk and certain specialty yarns of chapter 56 require only a “single transformation” (i.e. they are spun within NAFTA, or “yarn forward”).

The first step in determining whether a yarn (or any textile product) is originating is to forget about the “fiber forward” concept and look at the actual Rule of Origin in General Note 12 (t).

Look, for example, under HTSUSA 5205 (cotton yarn with more than 85% cotton):

A change to headings 5201 through 5207 from any other chapter, except from headings 5401 through 5405 or 5501 through 5507.

Since cotton fibers and cotton yarn are in the same chapter, this rule indicates that a foreign fiber spun into yarn would not be an adequate change in tariff classification. Neither would a shift from the other two groups shown, which are man-made filaments and fibers.

Let's look at three examples of cotton yarns spun in Mexico:

**Example 1:
Cotton yarn (HTSUSA 5205) is spun in Mexico from fibers (HTSUSA 5201) which wholly originate in Mexico.**

Would this originate, and under what rule? This is a trick question in the sense that it is a product that is wholly obtained or produced in Mexico - **Rule A**. There is no need to look at the Specific Rules of Origin because we're still in **Rule A**, not **Rule B**. No change in tariff classification is required. This example simply reminds us that yarn spun from Mexican cotton can qualify.

**Example 2:
Cotton yarn (HTSUSA 5205) is spun in Mexico from fibers (HTSUSA 5201) which are imported from Egypt.**

Following the Specific Rule of Origin for the yarn, note that a change in tariff classification from 5201 to 5205 is not sufficient. Therefore this yarn would not originate.

**Example 3:
Blended yarn (5205.13) imported from Mexico consisting of 90% cotton fibers originating in Mexico, blended with 10% imported polyester staple fiber imported from Japan under HTSUSA 5506.20.**

In this case, the Japanese staple fibers of heading 5506 fall within the range of non-allowable changes in tariff classification, so this yarn does not originate either.

What if our last example were only 5% polyester? Remember the *de minimis* rule: fibers present in amounts of 7% or less need not undergo the change in tariff classification. Therefore such a yarn would originate.

Before we move on to fabrics, we should again point out that there are many exceptions to the so-called “fiber forward” rule for yarns, including wool yarns, silk yarns and certain specialty yarns such as chenille yarns. Always check the Specific Rules of Origin (HTSUSA General Note 12 (t)) to be sure.

E. Specific Rules Pertaining to Fabric

The negotiators’ general approach in designing Specific Rules of Origin for most fabric was “yarn forward,” which means that fabric must be produced from yarn made in a NAFTA country in order for the fabric to be “originating” and have full access to benefits of the agreement. But again, this is just a guideline and one always has to refer to General Note 12 (t) (the Specific Rules of Origin) for the specific requirement that applies to the good in question. There are many exceptions to the so-called “yarn forward” rule, such as silk fabrics, which are fabric forward (fabric must be formed in the NAFTA territory), and certain special fabrics, which are fiber forward. But let’s look first at a Specific Rule of Origin that is yarn forward:

A change to headings 5512 through 5516 from any heading outside that group, except from headings 5106 through 5110, 5205 through 5206, 5401 through 5404 or 5509 through 5510.

This is the rule for the whole group of woven man-made staple fiber fabrics, and it says that such fabric, in order to originate, cannot be made from foreign wool, cotton or man-made fiber yarns, or from foreign man made filaments. But any other change is acceptable. In other words, the yarn must be formed (spun or extruded) in the NAFTA territory.

Let’s look at a couple of examples of fabrics that fall under this rule:

Example 4:
Polyester fabric (HTSUSA 5512.12) is woven in Mexico, from yarn (HTSUSA 5509.21) that was spun in Mexico, from fibers that were made in and imported from Japan under HTSUSA 5503.20.

This product qualifies because the change in tariff classification that occurred - foreign HTSUSA 5503 fiber to HTSUSA 5512 fabric - is allowed under the Specific Rule of Origin. That rule could be called “yarn forward” in the sense that the yarn has to be spun in the NAFTA territory.

Let’s look at a variation on the theme, again for a fabric of heading 5512:

Example 5:
Polyester fabric (HTSUSA 5512.12) is woven in Mexico, from yarn (HTSUSA 5509.21) that was spun in Malaysia.

Here the change in tariff classification we are concerned with is 5509 yarn to 5512 fabric. Since that shift is not allowed under this rule, the fabric does not originate.

Without going into more obscure examples, we should again point out that for fabrics there are many exceptions to the so-called yarn forward rule. For instance silk or linen fabric can be knit or woven from foreign yarns, and certain specialty yarns such as metallized yarns and chenille yarns can be made into fabrics without regard to the yarn forward rule. So again, be careful when using the term “yarn forward” - it does not always work! As we have already said, check the Specific Rules of Origin (HTSUSA General Note 12 (t)) to be sure.

F. Specific Rules Pertaining to Apparel

1. The Overall Pattern

The general intent of the NAFTA Rules of Origin for apparel and other articles is the same as what we discussed for fabric (i.e. “yarn forward,” or the yarn is spun or extruded in the NAFTA territory). And just as we did when talking about the fabric, at the risk of beating it to death, we must point out that yarn forward is just a guideline, there are many exceptions to this so-called “rule.”

Many of the Specific Rules of Origin for Chapter 61 and 62 require the same tariff classification change. Here is an example:

A change to headings 6105 through 6106 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

This rule indicates that for a knit blouse to qualify as NAFTA originating, any wool yarns, cotton yarns, man-made fiber yarns, and most vegetable fiber yarns, and any blended yarns whose chief weight is one of those fibers, must be spun or extruded in the NAFTA territory. This same list of HTSUSA heading numbers appears over and over again in chapter 61 and 62. Chapter 62 has one additional group of numbers (pile, tufted or terry woven fabrics, as illustrated in the following chart).

The table that follows summarizes which tariff changes are generally NOT sufficient to make a garment originating (subject to some exceptions, which will be discussed below):

| “NON-ALLOWABLE” TARIFF CHANGES FOR APPAREL | |
|---|--|
| For Chapter 61 & 62: | |
| Headings 5106-13 | Wool yarn and woven fabric |
| Headings 5204-12 | Cotton yarn and woven fabric |
| Headings 5307-08 | Vegetable fiber yarn except flax |
| Headings 5310-11 | Woven vegetable fiber fabric except linen |
| Chapter 54 | All MMF filament fiber, yarn, & woven fabric |
| Headings 5508-16 | MMF staple yarn and woven fabric |
| Headings 6001-06 | All knit fabric |
| For Chapter 62 only: | |
| Headings 5801-02 | Pile, tufted or terry woven fabrics |

The table which follows shows which tariff changes ARE generally sufficient to make a garment originating (subject to some exceptions which will be discussed below):

| “ALLOWABLE” TARIFF CHANGES FOR APPAREL | |
|---|---|
| Chapter 50 | All fibers, yarns and woven fabric of silk |
| Headings 5101-05, | Wool fibers |
| Headings 5201-03 | Cotton fibers |
| Headings 5301-06, 5309 | Vegetable fibers and linen fiber, yarn & fabric |
| Headings 5501-07 | MMF staple fibers |
| Headings 5602-03 | Felts and nonwovens |
| Headings 5604-06 | Rubberized, metallized, gimped, chenille, loopwale yarn |
| Headings 5804, 5806 | Lace, net, narrow woven fabric |
| Headings 5809-11 | Metallized woven fabric, embroidered or quilted fabric |
| Headings 5903, 5906 | Plastic-coated and rubberized fabric |

Keep in mind that these tables are just general guides and are by no means universal; always consult the Specific Rules of Origin to confirm what is gleaned from these tables.

In order to understand these rules, let's look at an example (refer to the Specific Rule of Origin for heading 6105-6106 at the beginning of this section):

**Example 6:
A knit blouse of heading 6106 is made in Mexico of 100% wool yarn that was imported from Korea.**

This blouse would not originate because the wool yarn is classified in heading 5106, which is one of the excluded headings.

**Example 7:
A knit blouse of heading 6106 is made in Mexico of 100% silk yarn imported from Korea**

This silk blouse would originate, since the silk yarn, classified in heading 5004 is not one of the excluded headings.

As noted earlier, this is the general rule, which covers most of the headings in chapters 61 and 62. There are a few exceptions. These include brassieres, certain knit intimate apparel and pajamas, and certain men's and boys' woven shirts.

2. Special Notes under General Note 12(t)

We always have to read the Specific Rules of Origin very closely to see if any special notes apply. We should just take a look at General Note 12(t) and notice what special rules might be in effect for articles and apparel.

Chapters 61 and 62 each have three general rules that apply to certain garments.

3. The Visible Lining Rules

The first concerns visible lining, and is **rule 1** in both chapters:

A change to any of the following headings or subheadings for visible lining fabrics:

5111 through 5112, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24 (excluding tariff items 5408.22.10, 5408.23.11, 5408.23.21 or 5408.24.10), 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92

through 5516.94, 6001.10, 6001.92, 6005.31 through 6005.44 or 6006.10 through 6006.44.

from any other heading outside that group.

This rule applies only to those specific garments for which it is listed, and includes jackets, suits, coats, skirts, and ski suits. For these specific garments, the rule requires that in order to qualify as NAFTA originating, both the garment and its lining must qualify. The rules for lining require that the lining fabric be made in a NAFTA territory if the fabric is cotton, wool, and most man made fibers. Silk linings and vegetable fiber linings are not listed, therefore, in those cases, the lining fabric need not be considered.

Example 8:

A cotton skirt of heading 6204.52 that otherwise qualifies, has an acetate lining constructed from fabric of 5516.12 which was imported from Taiwan.

The Specific Rule of Origin for heading 6204.52 states:

A change to subheadings 6204.51 through 6204.53 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

- (A) the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties, and
- (B) the visible lining fabric listed in chapter rule 1 for chapter 62 satisfies the tariff change requirements provided therein.

Part B of this rule requires the visible lining fabric to originate as defined in the lining rule (Chapter 61 rule 1), in order for the garment itself to qualify. Since the lining fabric does not meet this requirement (even though the outer part of the skirt meets its part of the rule), this skirt would not be considered originating.

Example 9:

A cotton skirt of heading 6204.52 that otherwise qualifies, has an acetate lining constructed from fabric of 5516.12 made in Mexico of acetate yarns imported from Taiwan. These yarns were classified in heading 5510.

In this case, the skirt would qualify as NAFTA originating, because the foreign yarn underwent the required tariff change in Mexico in the process of becoming the lining fabric.

Chapter 61 **rule 2** and Chapter 62 **rule 3** are also identical rules:

For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good, and such component must satisfy the

tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in chapter rule 1 for this chapter, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

This rule is composed of two parts. The first part of this rule is concerned with garments made up of differing components; the other part contains additional information on linings. Since we have just been considering the topic of linings, we will look at the second part first. This rule contains several additional facts about linings:

- The lining rules do not apply to removable linings.
- If a lining is made up of more than one fabric, only the fabric of the main body of the garment is to be considered - sleeves are excluded.
- If the main body of the garment, excluding sleeves, contains two or more different fabrics, the lining rule applies to the fabric that covers the greatest surface area.

Example 10:

An otherwise qualifying denim jacket of 6201.92.20 is lined with a wholly Mexican cotton flannel (5209.32) in the main body of the garment and a Korean woven acetate lining in the sleeves.

The Specific Rule of Origin for subheadings 6201.91-6201.93 requires:

A change to subheadings 6201.91 through 6201.93 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

- (A) the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties, and
- (B) the visible lining fabric listed in chapter rule 1 for chapter 62 satisfies the tariff change requirements provided therein.

Because of part B of this rule, we must at least consider the lining rule. However, only the acetate sleeve lining is from a non-NAFTA source. Chapter 62 **rule 3** says that we need not consider this lining because it is not in the main body of the garment. Hence, this jacket is originating.

4. Rules for Garments with Multiple Components

The first part of Chapter 61 **rule 2** (which is identical to Chapter 62 **rule 3**) concerns the origin determination of garments constructed from differing components. It states that “the rule applicable to the good shall only apply to the component that determines the

classification of the good". By "component" the agreement means a portion of a garment or article; it does not refer to blended fibers or mixed yarns.

Example 11:

A dress constructed from a knit top and a woven skirt. The knit top is 100% cotton, which was grown, spun into yarn, and knit into fabric in Mexico. The woven skirt portion is 100% polyester, which was imported from Taiwan in fabric form.

If we assume that the essential character is provided by the knit portion, the dress would be classified in heading 6104.42. The top portion meets the requirement of **rule 12(b)(I)** because it is wholly obtained or produced in the NAFTA territory. Although the imported polyester fabric would not meet the rule, it is ignored based on **rule 2** in chapter 61 and **rule 3** in chapter 62. Therefore, the dress would originate.

If we assume that the essential character is provided by the woven skirt portion, the dress would be classified in heading 6204.43. The skirt portion would not meet the requirement of 12(t), because the change from polyester woven fabric to a dress is not acceptable. Therefore, the garment would not originate.

Finally, if we assume that neither portion determines the essential character, and the garment is classified based on GRI 3(c), the number that comes last in the tariff. Again, the dress would be classified in 6204.43. Since the skirt portion determines the classification, as with the second part of the example, the dress would not originate.

This principle applies only to components, not to fibers or yarns. For a garment made from blended fibers or yarns, all yarns and all fibers must be considered.

5. Special Sweater Rules

Rule 3 of Chapter 61 is a stricter Rule of Origin for man-made fiber sweaters from Mexico:

For purposes of trade between the United States and Mexico, sweaters of subheadings 6110.30, 6103.23 or 6104.23, and sweaters otherwise described in subheading 6110.30 that are classified as part of an ensemble in subheadings 6103.23 or 6104.23, shall be treated as an originating good only if any of the following changes in tariff classification is satisfied within the territory of one or more of the NAFTA parties:

- (a) A change to tariff items 6110.30.10, 6110.30.15, 6110.30.20 or 6110.30.30 from any heading outside chapter 61 other than headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, any heading of chapters 54 or 55 or headings 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

- (b) A change to subheading 6110.30 from any heading outside chapter 61 other than headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, any heading of chapter 54, headings 5508 through 5516, or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more NAFTA parties.

This rule overrides the Rules of Origin for the specific HTSUSA numbers. The Specific Rule of Origin for U.S. or Mexican man-made fiber sweaters is fiber forward rather than yarn forward for the man-made fibers, which means that for the sweater to originate, the man-made fibers cannot be made outside of the NAFTA territory.

The rule, as it is written in the HTSUSA, however, is somewhat confusing because it only cites the HTSUSA numbers to 8-digit, not the 10-digit classification for the sweaters. Therefore, when using this rule, keep in mind that it refers only to those garments classified at the statistical - 10-digit level - as sweaters.

The rule also covers sweaters of synthetic fibers that are parts of ensembles, and classified in 6103.23 and 6104.23. The rule does not cover sweaters of artificial fibers that are part of an ensemble and classified in 6103.29 or 6104.29.

6. Special “Cut and Sew” Rules

Note 2 to Chapter 62 lists some fabrics - velveteen, corduroy, Harris Tweed, and Batiste fabrics - which follow a “cut and sew” rule. This overrides the specific rules listed by HTSUSA number in chapter 62:

Apparel goods of this chapter shall be considered to originate if they are both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

- (A) Velveteen fabrics of subheading 5801.23, containing 85 per cent or more by weight of cotton;
- (B) Corduroy fabrics of subheading 5801.22, containing 85 per cent or more by weight of cotton and containing more than 7.5 wales per centimeter;
- (C) Fabrics of subheadings 5111.11 or 5111.19, if hand-woven, with a loom width of less than 76 cm, woven in the United Kingdom in accordance with the rules and regulations of the Harris Tweed Association, Ltd., and so certified by the Association;
- (D) Fabrics of subheading 5112.30, weighing not more than 340 grams per square meter, containing wool, not less than 20 per cent by

weight of fine animal hair and not less than 15 per cent by weight of man-made staple fibers; or

- (E) Batiste fabrics of subheadings 5513.11 or 5513.21, of square construction, of single yarns exceeding 76 metric count, containing between 60 and 70 warp ends and filling picks per square centimeter, of a weight not exceeding 110 grams per square meter.

This rule says that garments of these specific fabrics only have to be cut and sewn in one or more of the NAFTA territories. Thus, if a good is classifiable in Chapter 62 and is cut and sewn in one of the territories from one of these fabrics, the garment originates. These fabrics have been referred to as “Short Supply” fabrics because they are not produced in great quantities in the U.S. And the fact that they are in short supply here is the reason why garments made of these fabrics have a liberal “cut and sew” rule rather than the general “yarn forward” rule.

G. Applying NAFTA “Rule C” to Apparel

Of course, all of the above examples we've been going through illustrate **rule B** of the Rules of Origin. That is what we'll be spending most of our time on. But a textile product might also qualify under **rule C**.

To review, **rule C** states:

they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

Thus, if you have a raw material, an intermediate product, and a final product, the final product will qualify if the intermediate product, by its Specific Rule of Origin, becomes an originating good.

In the textile and apparel chapters, this type of situation is rare. The originating rules are written, in general, so that both the intermediate products and final products have similar rules.

H. Specific Rules Pertaining to Articles

Knowing the general “yarn forward” approach to apparel, we can look at other articles and see that the pattern is generally (but not always) the same. Let's look at examples of some specific products.

Example 12:
Curtains (HTSUSA 6303.12) are cut and sewn from fabric (HTSUSA 6005.32) which is knitted in Canada from yarns (HTSUSA 5509.21) spun in Mexico from polyester fiber (HTSUSA 5503.20) imported from China.

The Specific Rule of Origin states:

A change to heading 6303 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapters 54 through 55, or headings 5801 through 5802 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

Reading the rule and trying to apply it to this curtain, we realize that the key shift here - from 5503 fiber to 6303 curtains - is not allowed under this rule. So in effect, at least for curtains of man-made fibers, the rule is fiber forward, not yarn forward. The fibers would have to be extruded in the NAFTA territory in order for these curtains to originate. This differs from the rule for apparel we looked at earlier - that rule would have allowed a shift from non-originating fiber to finished good. This points up the importance of always consulting the Specific Rule of Origin in HTSUSA General Note 12(t).

In the Specific Rules of Origin for chapter 57 (carpets), just as for the sweaters, there are stricter Rules of Origin for carpets from Mexico:

A change to headings 5701 through 5705 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5308 or 5311, chapter 54, or headings 5508 through 5516; provided that for purposes of trade between the United States and Mexico, a good of chapter 57 shall be treated as an originating good only if any of the following changes in tariff classification were satisfied within the territory of one or more of the parties:

- (a) A change to subheadings 5703.20 or 5703.30 or heading 5704 from any heading outside chapter 57 other than headings 5106 through 5113, 5204 through 5212, 5308, 5311 or any headings of chapters 54 or 55; or
- (b) A change to any other heading or subheading of chapter 57 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5308, 5311, any heading of chapter 54 or headings 5508 through 5516.

In a nutshell, this rule says:

The Specific Rule of Origin for U.S. or Mexican man-made fiber tufted or felt carpets is fiber forward rather than yarn forward, which means that for the carpet to originate, the man-made fibers cannot be made outside of the NAFTA territory.

Example 13:

A tufted carpet (HTSUSA 5703.20) is made in Mexico from a Malaysian jute fabric (HTSUSA 5310.10) which is tufted (in Mexico) with yarn (HTSUSA 5509.11) that is spun in the U.S. from Taiwanese nylon staple fibers (HTSUSA 5503.10).

Considering just the first part of the Specific Rule of Origin (see above), this carpet would appear to be originating. The two foreign materials, Malaysian fabric of 5310 and Taiwanese fibers of 5503, are not among the exceptions listed within the rule.

However, for trade between Mexico and the U.S., we now know that there is a special rule which applies to subheading 5703.20, which does not allow fiber of 5503 - as we said, the effect of this new rule was to make this type of carpet “fiber forward” instead of yarn forward. Hence, under this special rule the carpet is non-originating.

III. MARKING RULES FOR TEXTILE AND APPAREL PRODUCTS

U.S. legislation implemented the Uruguay Round of trade agreements and the Marking Rules for textiles effective July 1, 1996. These rules determine country of origin for all countries (excluding Israel, but including the NAFTA countries), for purposes of marking, duty rate determination, applicability of Merchandise Processing Fee (MPF) and quota/visa determination. These rules are codified under Section 102.21 of the Customs Regulations.

We would use the Marking Rules in cases where the goods do originate under NAFTA, but where we still need to determine the country of origin to determine what duty rate (Mexico or Canada) applies. It is also worth noting that the “NAFTA Preference Override” under 102.19 CR provides for cases where there is a conflict between the Rules of Origin and the Marking Rules. For a complete discussion of the Marking Rules for textiles, refer to the Informed Compliance Publication entitled “*What Every Member of the Trade Community Should Know About: Textile & Apparel Rules of Origin.*”

IV. MEXICAN SPECIAL REGIME

The benefits of Mexican Special Regime are that the goods are not subject to MPF or duty. These benefits apply to all textile products, but only if they are assembled in Mexico. An example at the end of this section illustrates this point.

The basic requirements for Mexican Special Regime can be found in HTSUSA 9802.00.9000, cited in the box on the next page.

The Mexican Special Regime has the following requirements:

- The product must be assembled in Mexico
- The fabric must be wholly formed in the U.S., in other words, the yarn must be either knitted, woven or otherwise constructed (spunbonded) into fabric (foreign greige fabric that is printed, dyed, and cut in the U.S. does not qualify).
- The fabric must be cut into components in the U.S.

9802.00.9000

Textile and apparel goods, assembled in Mexico in which all fabric components were wholly formed and cut in the United States, provided that such fabric components, in whole or in part,

(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 for herein.

One of the benefits concerns post production procedures. Under the Mexican Special Regime, a textile article may be bleached, garment dyed, stone-washed, acid washed, enzyme washed or permanently pressed after assembly. These processes disqualified an article under prior versions of the Special Regime program.

Some of the prior requirements, mostly procedural, are still in place:

- Importers are obligated to retain proof that the fabric is U.S. formed (yarn made into fabric in the U.S.).
- Accurate records must be maintained to show the quantities of cut components exported and the finished goods imported.
- The requirement that the cost of findings, trimmings and certain elastic strips of foreign origin do not exceed 25% of the cost of the components of the assembled product, remains unchanged.

Procedural differences:

- ITA-370P form is not required for goods classified under HTSUSA number 9802.00.9000.
- The importer must certify that the finished goods are sewn in Mexico from U.S. formed and cut fabric.

Example 14:

A men's suit type jacket of wool, knit, (6103.00.00) does not originate under the NAFTA. It is sewn in Mexico from components that have been cut in the U.S. from fabric that has been formed (knit) in the US from yarn that has been imported from outside the NAFTA territory.

Under this example, the jacket would not originate because of the non-NAFTA yarn, and the jacket would be subject to the general duty rate. Instead, because the fabric was formed and cut in the U.S., this suit-type jacket qualifies for Special Regime. It would be free of both duty and MPF.

V. TARIFF PREFERENCE LEVELS (TPLS)

If a good is not originating under the Rules of Origin, it might nevertheless enjoy reduced duty rates under the TPLs. There are three conditions or requirements for a good to qualify for a TPL:

- it has to meet the qualifications set out in HTSUSA Section XI, additional U.S. notes 3-6;
- it must be accompanied by a Certificate of Eligibility; and
- it must be within the annual quantity limits set out in HTSUSA Section XI, additional U.S. note 3, 4 or 5 depending on the good.

The specific rules are broken out as follows:

- Note 3 covers apparel and certain textile articles
- Note 4 covers certain fabric and made-up articles
- Note 5 covers certain yarns

SHORTHAND VERSION OF TPLs

CA apparel cut or knit to shape & sewn or otherwise assembled.

MX apparel cut or knit to shape & sewn or otherwise assembled, except for certain:

**blue denim or oxford cloth,
MMF sweaters,
certain garments of circular knit fabric.**

MX apparel/articles assembled from U.S. cut fabric, except for certain:

**blue denim or oxford cloth,
MMF sweaters,
certain garments of circular knit fabric.**

CA or MX cotton or MMF fabric, or made-up articles.

CA or MX spun cotton or spun MMF yarns.

Each rule contains separate requirements for Canada and Mexico and separate quantity levels for each country. For Mexico there is an additional rule and a separate quantity for apparel and some articles assembled in Mexico from fabric cut in the U.S.

Specifically, the rules are:

- For Canadian apparel to qualify, the garment must be cut or knit to shape and sewn or otherwise assembled in Canada from foreign fabric or yarn [HTSUSA Section XI, Additional U.S. Note 3(a)]

(The specific quantity level for goods qualifying under this rule is found in HTSUSA Section XI, Additional U.S. Note 3(f).)

- For Mexican apparel, the qualifying rule is the garment must be cut or knit to shape and sewn or otherwise assembled from foreign fabric or yarn [HTSUSA Section XI, Additional U.S. Note 3(b)]. Exceptions:

Blue denim over 200 grams, e.g., denim jackets and jeans

Woven oxford fabric of an average yarn number less than 135 metric number, e.g., men's dress shirts

Man-made fiber sweaters

Certain garments of circular knit fabric of yarn number equal to or less than 100 metric number, e.g., cotton and man-made fiber underwear, T-shirts, tank tops, also pajamas (fine knit)

A garment made from these fabrics, even if the garment is cut and sewn in Mexico, would not qualify for TPL. These exceptions are spelled out in detail in HTSUSA Section XI, Additional U.S. Notes 3 (d) and (e).

(Quantity levels allowed for this TPL are found in HTSUSA Section XI, Additional U.S. Note 3(g)(I))

- For Mexico there is a separate TPL established for apparel and certain textile articles that are sewn or otherwise assembled in Mexico under HTSUSA 9802.00.8055. This is for foreign fabric cut in the U.S. and exported to Mexico for assembly. There are certain exceptions, the same exceptions as noted above. If a TPL fills for this HTSUSA number merchandise must be entered under HTSUSA 9802.00.8065. (see HTSUSA Section XI, additional U.S. Note 3(c)).

(Quantity limits for this TPL can be found in HTSUSA Section XI, Additional U.S. Note 3(g)(ii))

- Note 4 covers cotton or man-made fiber fabric or made-up articles classified in Chapters 52-55, 58, 60 and 63 that are woven or knit in Mexico or Canada from foreign spun yarns. This note also applies to articles of HTSUSA #9404.90 (bedding) that are finished and cut and sewn or otherwise assembled from certain foreign fabrics.
- Note 5 covers spun cotton and spun man made fiber yarns. Each of these rules indicates certain exceptions.
- There is a special arrangement with Canada for reporting TPLs that apply for fabric and made-up textiles.
- For textile articles that are not qualifying because certain non-originating textile materials do not undergo the applicable change in tariff classification as set out in the Agreement, but where such materials are 50% or less by weight of the materials of that textile article, only 50% of the square meter equivalent (SME) is to be charged to the TPL. If over 50%, then 100% of the SME will be charged (see HTSUSA Section XI, additional U.S. Note 4(c)).

Example 15:

A man's pair of trousers (6103.41) constructed in Mexico from Italian knit fabric, 70% wool, 30% polyester.

This garment is not originating because the Specific Rule of Origin is “yarn-forward.” However, in light of the TPL rules, if a good classified in Chapters 61 or 62 is both cut (or knit to shape) and sewn or otherwise assembled in Mexico from foreign fabric or

yarn, it can be entitled to TPL treatment. The exceptions to this rule spelled out in HTSUSA Section XI, Additional U.S. Notes 3(d) and 3(e) do not apply. So these trousers which are non-originating, are entitled to the lower NAFTA rates, up to the TPL limit that has been set.

Procedural Requirements. The claim for Tariff Preference Level (TPL) will be based upon a Certificate of Eligibility:

- Mexican and Canadian governments must issue a Certificate of Eligibility
- Do not confuse this with the documentation required for goods considered to be originating. The certificate of eligibility is issued by the foreign government, the NAFTA Certificate of Origin is not.
- Without this certificate non-NAFTA originating textile merchandise will be dutiable at the column 1 rate.

When a certificate of eligibility is submitted with the entry/entry summary the appropriate Chapter 99 number or 9802.00.8055, as well as the certificate of eligibility number must appear on the CF 7501 in column 34.

Claims for TPLs, although normally made at the time of entry summary, will be accepted until the time when the liquidation of an entry becomes final. Retroactive claims for TPL status must be accompanied by a Certificate of Eligibility, and will be honored only if the specified quantity limitations have not been filled.

NAFTA Schedule 3.1.3 of Annex 300B "Conversion Factors" provides for conversion factors to obtain Square Meter Equivalents (SME) for various products for purposes of the TPLs.

VI. DOCUMENTATION

A. NAFTA Certificate of Origin

The NAFTA Certificate of Origin (Customs Form 434) must be completed by the exporter for any textile product for which a NAFTA claim is made, and need not be filed with the entry package. It must be in the possession of the importer at the time the NAFTA claim is made, and available upon Customs' request.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



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