

ORIGINATING OFFICE: FO:TP:TA

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CUSTOMS DIRECTIVE NO. 3810-010A

DATE: JUNE 28, 1999

SUPERSEDES: 099 3810-010, 7/27/94

REVIEW DATE: JUNE 2001

SUBJECT: NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) ORIGIN DETERMINATIONS

1 PURPOSE. This directive establishes policy and procedures for the issuance of origin determinations pursuant to Article 506 of the North American Free Trade Agreement (NAFTA).

2. POLICY. An origin verification results in a written determination by a Port Director pursuant to 19 CFR 181 Subpart G. This includes instances where a verification is initiated, but the exporter or producer fails to provide sufficient information in support of a valid Certificate of Origin (CO) or fails to consent to a verification visit.

2.1 The Certificate of Origin for any good that is the subject of a negative determination, becomes invalid on the effective date of the determination.

2.2 Negative determinations based on sufficient information will be reported to the National Import Specialist (NIS) by means of a CF6431. Instances where the negative determination results from a failure to receive sufficient information or consent for a verification visit should not be reported to the NIS.

2.3 The written determination is to be provided to the exporter. A separate determination will be provided to the producer if the producer supplied a CO to the exporter. Determinations are not issued to the producer of a material or the importer. Every effort will be made to issue the determination within 60 days of receiving all necessary information. Verifications involving novel or controversial issues will be referred to the National Import Specialist, and these determinations may take longer than 60 days.

2.4 In cases where no CO or a valid CO is not received, the claim is to be denied, but the denial is not a determination. Similarly, where the claim is made on a good other than as an originating good, such as a Tariff Preference Level (TPL) or repair (Chapter 98 of Harmonized Tariff Schedule of the United States (HTSUS), any finding is not a determination.

2.5 Where an increase in duties requires notification to the importer of record, the notification will be given on a separate CF29. The importer should not receive a copy of the determination.

3 AUTHORITIES/REFERENCES. 19 CFR 181.75-76, 19 CFR 181.72 and NAFTA Article 506.

4 DEFINITIONS.

4.1 Determination - a written decision regarding whether a good that was the subject of an origin verification qualifies as an originating good as set forth in Article 401 of the Agreement (General Note 12 of the Harmonized Tariff Schedule of the United States (HTSUS)).

4.2 Tariff Preference Level (TPL) - a mechanism that provides for the application of a customs duty at a preferential rate to imports of a particular good up to a specified quantity, and at a different rate to imports of that good that exceed that quantity (Annex 300-B of the NAFTA).

4.3 Verification - review of the NAFTA documentation to substantiate the claim.

4.4 Repair or alteration - goods entered under subheading 9802 of the HTSUS.

5 RESPONSIBILITIES. The Assistant Commissioner, Office of Field Operations; Director, Trade Programs; Directors, Field Operations; Port Directors; and Assistant Port Directors will ensure these procedures are followed.

6 PROCEDURES.

6.1 Determinations are issued on a Customs Form 29 (CF29), "Notice of Action." Determinations are always issued to the exporter. A separate determination is issued to the producer only if the producer supplied a CO to the exporter. Determinations of the origin of the good are not sent to the producer of a material. 19 CFR 181.75 describes the information to be included. Attachment A to this directive includes a synopsis of the information.

6.2 Positive determinations are issued as "TAKEN" actions. The effective date is the date of issuance. See Attachments A and B to this directive for what to include and sample language.

6.3 A negative determination, where the exporter or producer supplied sufficient information, is issued as a "PROPOSED" action. In general, the effective date is 30 days from the date of issuance for exporters in Canada and 30 days from the date of receipt for exporters in Mexico. See Attachments A and B to this directive for what to include and sample language.

6.3.1 If the negative determination results from U.S. Customs applying a classification or value to a material which is different from the classification or value applied by the exporting country, the Port Director should notify the Office of Field Operations, Trade Agreements Division at Headquarters.

6.4 If the exporter or producer fails to respond or provide sufficient information to a

letter, CF28 or questionnaire, a follow-up letter (19 CFR 181.72(d)) will be issued to the exporter as a "PROPOSED" CF29. The follow-up letter is to include a determination indicating that if the required information is not received, the good will be considered non-originating. A copy of the original request will be attached to the follow-up letter. The effective date, in general, is 30 days from the date of issuance for exporters in Canada and 30 days from the date of receipt for exporters in Mexico. Attachment B to this directive includes sample language for the follow-up letter.

6.5 If the exporter or producer fails to consent to or cooperate during a verification visit, the claim will be denied and the action noted as "TAKEN." A copy of the original notification letter will be attached to the determination. The effective date is the date of issuance for exporters in Canada and the date of receipt of the notice for exporters in Mexico.

6.6 If the negative determination, follow-up letter or failure to consent establishes a pattern of conduct (19 CFR 181.76(c)), the pattern of conduct statement contained in Attachment A of this directive will be included in the determination.

6.7 If additional information is supplied before the effective date of a proposed determination, it must be taken into consideration. The determination is to be amended accordingly and reissued as a "TAKEN" action. NOTE: If the determination is still negative after being amended, it cannot be reissued prior to the original effective date.

6.8 Positive determinations may be sent by any method. Negative determinations may be sent to Canada by any method. Negative determinations must be sent to Mexico by a method that produces a receipt. A fax is not considered received until the company sends a separate receipt.

Assistant Commissioner
Office of Field Operations

Attachments

ATTACHMENT A
REQUIRED INFORMATION FOR DETERMINATIONS
Reference: 19 CFR 181.75

All determinations require the following information:

- 1 a description of the good that was the subject of the verification with the identifying numbers and dates of the export and import documents pertaining to the good;

- 2 a statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and
- 3 the legal basis for the determination, usually General note 12 HTSUS or in cases where insufficient information was received 19 CFR 181.72(d) or 19 CFR 181.74(c) if consent for a verification visit was not received.

Negative determinations also require the following:

- 1 a notice of intent to deny preferential tariff treatment to the good;
- 2 the specific date after which preferential treatment will be denied, see the PROCEDURE section of this directive for guidance in establishing the effective date;
- 3 if the action is proposed, a statement that additional information may be supplied before the effective date; and
- 4 the following statements:

“The Certificates of Origin prepared by you and referenced in this notice will be invalid on the effective date of this determination. Pursuant to Article 504 of the North American Free Trade Agreement, you have an obligation to notify in writing all persons to whom you have given one of these Certificates of Origin.”

“As exporter, you have the right to appeal the liquidation of the entries listed in this notice pursuant to 19 U.S.C. 1514 and 19 CFR 174. A Bulletin Notice of Liquidation will be posted at the Customhouse where the entries were filed. Your appeal rights are allowed for 90 days after the Bulletin Notice of Liquidation is posted. Appeals filed prior to liquidation will be denied as untimely.”

If the negative determinations result in a **PATTERN OF CONDUCT** pursuant to 181.76(c), the following statement will also be included:

“The U.S. Customs Service has issued two or more determinations indicating that these goods do not qualify for preferential tariff treatment pursuant to NAFTA. All future shipments of these goods to the United States will be denied such treatment until you establish compliance with the rules of origin, as described in General Note 12 to the Harmonized Tariff Schedule of the United States.”

ATTACHMENT B
SAMPLE DETERMINATIONS

POSITIVE DETERMINATION

(The good qualifies as originating)

The U. S. Customs Service has verified the origin of [DESCRIPTION] pursuant to Article 506 of the North American Free Trade Agreement (NAFTA). The good was imported into the United States on the entry summaries listed below and the claim for NAFTA treatment was based on a Certificate of Origin dated_____.

The verification revealed that the good qualifies as an originating good pursuant to General Note 12 _____ to the Harmonized Tariff Schedule of the United States. The [DESCRIPTION] is classified under HTS _____ with a duty rate of _____.

[LIST ENTRIES]

NEGATIVE DETERMINATION

(Exporter or producer supplied sufficient information & the good doesn't qualify as originating)

The U. S. Customs Service has verified the origin of [DESCRIPTION] pursuant to Article 506 of the North American Free Trade Agreement (NAFTA). The good was imported into the United States on the entry summaries listed below and the claim for NAFTA treatment was based on a Certificate of Origin dated_____.

The verification revealed that the good does not qualify for preferential tariff treatment pursuant to General Note 12 _____ to the Harmonized Tariff Schedule of the United States. Specifically, [provide the reason the good did not meet the rule of origin.]

The [DESCRIPTION] is classified under HTS _____ with a duty rate of _____. This determination will be come effective [30 days from the date of this notice for Canada or 30 days from receipt of this notice for Mexico]

You may provide additional information concerning the origin of the good before the effective date of this notice. If you do not supply additional information, preferential tariff treatment will be denied without further notice. If you do supply additional information it will be taken into consideration and a new notice will be issued.

If preferential tariff treatment is denied, the Certificates of Origin prepared by you and referenced in this notice will be invalid on the date of the denial. Pursuant to Article 504 of the North American Free Trade Agreement, you have an obligation to notify in writing all persons to whom you have given one of these Certificates of Origin

As exporter, you have the right to appeal the liquidation of the entries listed in this notice pursuant to 19 USC 1514 and 19 CFR 174. A Bulletin Notice of Liquidation will be posted at the Customhouse where the entries were filed. Your appeal rights are allowed for 90 days after the Bulletin Notice of Liquidation is posted. Appeals filed prior to liquidation will be denied as untimely.

[LIST ENTRIES]
FOLLOW-UP LETTER

(The exporter of producer failed to provide sufficient information)

Pursuant to Article 506 of the North American Free Trade Agreement, the United States Customs Service attempted to verify the origin of the good(s) listed below, (original request attached).

[PRODUCT DESCRIPTION]

If the requested information is not supplied within 30 days from the receipt of this notice, preferential tariff treatment will be denied without further notification pursuant to 19 CFR 181.72(d).

Claims for preferential tariff treatment were made on the consumption entries listed below and were based on a Certificate(s) of Origin signed by you on [CO DATE]

If preferential tariff treatment is denied, the Certificates of Origin prepared by you and referenced in this notice will be invalid on the date of the denial. Pursuant to Article 504 of the North American Free Trade Agreement, you have an obligation to notify in writing all persons to whom you have given one of these Certificates of Origin.

As exporter, you have the right to appeal the liquidation of the entries listed in this notice pursuant to 19 U.S.C. 1514 and 19 CFR 174. A Bulletin Notice of Liquidation will be posted at the Customhouse where the entries were filed. Your appeal rights are allowed for 90 days after the Bulletin Notice of Liquidation is posted. Appeals filed prior to liquidation will be denied as untimely.

[If this is the second negative determination and it results in a pattern of conduct (19 CFR 181.76(c)), the following statement will also be included.]

The U.S. Customs Service has issued two or more determinations indicating that these goods do not qualify for preferential tariff treatment pursuant to NAFTA. All future shipments of these goods to the United States will be denied such treatment until you establish compliance with the rules of origin, as described in General Note 12 to the Harmonized Tariff Schedule of the United States.]

[LIST ENTRIES]