

**NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)**  
**AUDIT (VERIFICATION) MANUAL**

**CHAPTER 1 PURPOSE OF THE MANUAL AND LEGISLATIVE FRAMEWORK**

**1.1 Purpose of the Manual**

This verification manual presents the audit process and the recommended verification procedures with which an auditor or officer must be familiar in order to conduct a verification and perform other related tasks for the North American Free Trade Agreement (NAFTA). This manual is intended to provide the user with a clear understanding of the verification function. Reference to, or usage of, the manual in daily activities will result in verifications and other related tasks being done in an efficient and uniform manner, that is consistent with established policies and procedures.

The Customs Administration of each Party has consulted in the writing of this manual, and a similar manual has been developed for their own Customs Administration. It is expected that by having a similar verification manual for all Customs Administrations there will be a uniform and consistent application of verification procedures when conducting rule of origin verifications under the NAFTA.

**1.2 Scope**

This manual covers subjects which are related to the process and the recommended procedures pertinent to conducting verifications under the provisions of the NAFTA. The manual does not deal specifically with interpretations and rulings on origin, as these subjects are covered by other directives issued by each Customs Administration. This manual explains the use of various reports, forms, and working papers that are required for the audit activity. (Examples are included in the appendices).

**1.3 Amendments**

Changes in legislation, regulations and administrative policies may necessitate changes or updates to the contents of this manual. All changes will be discussed among the Parties.

**1.4 Legislative Framework**

Article 506 of the NAFTA sets out the authority for each Party to the Agreement to conduct verifications of the books and records of the exporter or producer located in the territory of another NAFTA Party. The implementing legislation and enabling regulations support the text of the NAFTA.

For the domestic legislative framework of the other Parties, refer to the respective Annex 1, Section 1.4 at the end of this Chapter.

The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057. The principal role of the U.S. Customs Service is to administer the provisions of the NAFTA and the Act which relate to the importation of goods into the United States from Canada and Mexico. Those Customs related NAFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin) and Chapter Five (Customs Procedures).

The majority of the NAFTA implementing regulations are contained in Part 181 of the Customs Regulations. However, in those cases in which NAFTA implementation is more appropriate in the context of an existing regulatory provision, the NAFTA regulatory text has been incorporated in an existing Part within the Customs Regulations. The NAFTA Rules of Origin Regulations are set forth as an Appendix to Part 181. The text was trilaterally negotiated and is presented as such, except for editorial modifications necessary and appropriate for the U.S. regulatory context.

The following specific Parts of the Customs Regulations were revised to reflect changes resulting from the NAFTA:

Part 10- Articles Conditionally Free, Subject to a Reduced Rate, etc.  
Part 12- Special Classes of Merchandise  
Part 24- Customs Financial and Accounting Procedure  
Part 123- Customs Relations with Canada and Mexico  
Part 134- Country of Origin Marking  
Part 162- Record keeping, Inspection, Search, and Seizure  
Part 174- Protests  
Part 177- Administrative Rulings  
Part 178- Approval of Information Collection Requirements

Part 191- Drawback  
**ANNEX 1 CANADA**

#### **1.4 Legislative Framework**

In Canada, Department Memorandum D11-4-20, "Origin Verification Procedures" outlines the Department's program for verification procedures pursuant to section 42 of the *Customs Act*, and Article 506 of the NAFTA, and the Uniform Regulations of the NAFTA.

The Uniform Regulations for Chapters Three and Five of the NAFTA have been agreed to by the governments of Canada, Mexico and the United States, and for Canada are contained in Departmental Memorandum D11-4-18, "Uniform Regulations, Chapters Three and Five of NAFTA". These Uniform Regulations elaborate in detail how NAFTA Parties will interpret, apply and administer the obligations regarding customs procedures under Chapter Five, and national treatment and market access under Chapter Three, and are to be read in conjunction with these Chapters.

The NAFTA Rules of Origin Regulations (regarding the rules of origin under Chapter Four of the NAFTA) effective from January 1, 1994 to September 30, 1995 are found in Customs Notice N-840. The NAFTA Rules of Origin Regulations effective from October 1, 1995 onward are found in Departmental Memorandum D11-5-1, "NAFTA Rules of Origin Regulations".

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##### **1.4.1 Customs Act**

The *Customs Act* provides the domestic legal framework for administering and enforcing laws relating to Revenue Canada, Customs and Excise including the *Customs Tariff*.

The *Customs Act*, for which the Minister of National Revenue is responsible, creates the authority for the administration of Customs matters generally and for the Governor-in-Council to make specific administrative regulations. The collection of Customs duties is based on the principle of

self-assessment and voluntary compliance by the Canadian importer or owner of imported goods who must report and account for all such goods as required by the *Customs Act*. The *Customs Act*, therefore, provides the mechanism for the collection of duties and taxes imposed on imported goods by other federal statutes, and for the enforcement of the many federal statutes that prohibit, regulate or control imported and exported goods.

Section 42 of the *Customs Act* specifically addresses verifications conducted for the purposes of determining origin, the statement of origin, the effective date of a re-determination of origin, the denial or withdrawal of the benefit of the preferential tariff treatment, and advance rulings.

#### 1.4.2 Customs Tariff

Through the *Customs Tariff* Canada gives effect to the International Convention on the Harmonized Commodity Description and Coding System. It is this *Customs Tariff* that is used by Revenue Canada when confirming the classification of goods and materials during the course of a verification as it is the HS tariff classification of the country into whose territory the good is imported that is applicable.

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The *Customs Tariff* is a fiscal statute that:

- imposes customs duties on imported goods;
- provides for the tariff treatment accorded to imported goods depending on their country of origin;
- provides for other conditions (e.g. relating to transshipment) that goods must meet in order to be entitled to a specific tariff treatment; and
- provides for the tariff rate (rate of customs duty) applicable to goods, depending on the classification of the goods; and, provides for duty relief.

### **ANNEX 1 MEXICO**

#### **1.4 Legislative framework**

Articles 511 and 514 of the NAFTA published in the *Official Gazette of the Federation* on December 20, 1994, set out that the Parties shall establish, and implement through their respective laws the Uniform Regulations regarding the Interpretation, Application and Administration of Chapter Four of the NAFTA.

Article 506 of the NAFTA, published in the *Official Gazette of the Federation* on December 20, 1994 and rules 35 through 66, of Section VII, of Title III of the Uniform Regulations regarding the Interpretation Application and Administration of Chapter Four of the NAFTA, published in the *Official Gazette of the Federation* on December 30, 1994, set out the verification procedures to conduct origin verifications of goods imported into Mexico for which preferential tariff treatment was claimed, in order to determine whether such goods qualify as originating as stated in their certificates of origin. Verifications are mainly conducted by using written questionnaires and performing verification visits.

In addition to the legal proviso referred to in the previous paragraph, articles 3, and 116 of the Customs Law and Article 48 of the Fiscal Federal Code and the Interim regulations of the Ministry of Finance and Public Credit set out that the Direction of International Audit, of the Direction General of Revenue Policy and International Fiscal Affairs, acting as a Customs Authority, may request exporters, producers, customs brokers and importers to provide the information regarding the origin of imported goods for verification purposes.

The applicable importation duties for importations that received the benefit of the NAFTA preferential tariff treatment may also be verified by the Direction of International Audit mentioned before. The applicable importation duties are established in the General Importation Duty Law (Ley del Impuesto General de Importaci· on a most favored nation basis, and such Law is structured taking into account the guidelines provided for in the Harmonized System. In order to apply the General Importation Duty Law, it is required to observe the duty phase-out schedules, published on an annual basis for NAFTA purposes, for originating goods in accordance with the terms provided for in NAFTA Annex 302.2.

In addition to the legal provisions referred to in the previous paragraph the Direction of International Audit may verify the country of origin marking in accordance with the terms stated in Chapter III of the NAFTA and the Decree in which the country of origin marking guidelines were published on the *Official Gazette of the Federation* dated January 7, 1994.

The legal provisions above mentioned, provide the legal framework for administering and enforcing laws for NAFTA purposes, in the case of the Ministry of Finance and Public Credit of Mexico.