

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)
AUDIT (VERIFICATION) MANUAL
CHAPTER 2 COOPERATION AMONG THE PARTIES

2.1 Exchange of Rulings

Both consultation and the exchange of rulings are required pursuant to paragraph 1, Article 512 of the North American Free Trade Agreement (NAFTA) which states, "Each Party shall notify the other Parties of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

(a) a determination of origin issued as the result of a verification conducted pursuant to Article 506(1);

(b) determination of origin that the Party is aware is contrary to;

(i) a ruling issued by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin, or

(ii) consistent treatment given by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin, country of origin marking requirements or determinations as to whether a good qualifies as a good of a Party under the Marking Rules; and

(d) an advance ruling, or a ruling modifying or revoking an advance ruling, pursuant to Article 509."

In order to ensure the uniform application of the rules of origin NAFTA meetings are held between the three Customs Administrations. NAFTA meetings are held at the audit level, Customs Sub-group level, and at the Working Group level. The auditors of each NAFTA Party meet to discuss issues and then report the results of the discussions to the Customs Sub-group. Refer to Chapter 7-NAFTA Working groups.

It is very important that this process of consultation and exchange of information continue, given that its primary objective is to ensure the uniform application of the rules of origin.

2.2 Confidentiality of Business Information

NAFTA Article 507, Confidentiality, states:

"1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. The confidential business information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters."

For specific legislation from the other Parties affecting confidentiality of business information, refer to the respective Annex 2, Section 2.2. at the end of this Chapter.

Section 181.121 of the U.S. Customs Regulations reflects the principle of maintenance of confidentiality of business information set forth in NAFTA Article 507(1); and, Section 181.122 reflects the NAFTA Article 507(2) exception to non-disclosure in the case of disclosures to governmental authorities for administrative and enforcement purposes.

2.3 Communication

As much as possible, Customs issues under dispute with respect to the NAFTA are resolved through consultation and discussion between the three administrations. Refer to Chapter 7- NAFTA Working groups. Only in instances where no possible grounds for agreement exist between the Parties would an issue be referred to the Commission - Good Offices, Conciliation and Mediation, and then possibly to the Arbitral Panel for dispute settlement.

ANNEX 2 CANADA

2.2 Confidentiality of Business Information

Sections 107 and 108 of the Customs Act set out the restrictions on the communication of information and the circumstances under which information obtained under the Act may be disclosed. Section 160 of the Customs Act sets out the penalties for contravention of sections 107 and 108.

ANNEX 2 MEXICO

2.2 Confidentiality of business information

Articles 507 of the NAFTA, and 69 of the Fiscal Federal Code set out the confidentiality of any confidential business information gathered during the course of any verification and protect that information from disclosure that could prejudice the competitive position of the persons providing the information.