

## The Pirate's Code of FTA Management

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NAFTA solicitation season is upon us. You know what I'm talking about. It starts with a customer making a simple request for a NAFTA or other FTA certificate and quickly spirals down into disagreements about classifications, preference criteria and date formats. I often refer to this as the battle of the forms season where bedlam rules and tempers flare.

With civility in such scarce supply these days, can we at least agree to be civil with one another during the upcoming free trade agreement solicitation season? To that end I've taken the liberty of drafting an FTA code of honor. Think of it like the Pirate's Code from the Pirates of the Caribbean movie series. And while we may not be pirates, as trade compliance professionals I'd like to think we're a swashbuckling group that aspires to a higher ideal.

If you lay claim to the title of trade compliance professional, then the following rules should apply to you. Not complying with the code dishonors us all.

### 1. Don't dither

Ask for what you want. If you are soliciting FTA documentation be specific about the items for which you want a response. Don't make your supplier guess at what you mean by "all of the items we buy from you."

Be sure your list is up-to-date. If you do not plan on purchasing the item from the supplier in the near future, do not request an FTA certificate. Also don't request information for inconsequential materials such as packing materials that are ignored when originating your finished goods.

### 2. Speak up mate and communicate!

While ghosting might be the norm on Tinder, it is not OK in the business world. From where I sit, there is an abysmally low response rate to FTA solicitation requests. Basic business communication etiquette rules apply here.

- Timely acknowledge receipt of the request
- State the time frame in which you will respond
- Respond by that date.

Now that isn't hard, is it?

Solicitors, give your suppliers sufficient time to respond to your request. Remember that issuing an FTA certification statement is the last step in what can be a laborious and lengthy origination process.

### 3. Get the barnacles out of your mouth

Make clear unambiguous statements. Have you seen a variation of this response?

*I certify that the referenced goods comply with the origin rules specified for these goods in the North American Free Trade Agreement and that further processing or assembly outside the territories of the parties has not occurred subsequent to processing or assembly in the NAFTA territories.*

At first blush this may appear to be an acceptable manufacturer's affidavit claiming that the goods qualify for duty free treatment. Upon closer scrutiny we find ourselves wondering to which rules the statement applies. Does it refer to the Annex 401 origination rules or merely to the NAFTA labeling rules in 19 CFR §102?

As we dig a little deeper into the statement we find that it does not include key data elements necessary to make subsequent NAFTA statements. What was the preference criterion? Did the originator rely on net cost? Did they rely on the correct harmonized code? Who really manufactured the goods?

At best statements such as the above are ambiguous. At worst they can appear to be deceptive.

Most of the FTAs specify a list of data of minimum data elements required when making a certification of origin statement. Anything less than that is not acceptable.

### 4. Stop pulling rank!

Just because you hold a credential as a licensed customhouse broker or trade attorney does not mean you are correct. As a professional in the trade compliance arena you know that trade regulation can be ambiguous and subject to changing interpretations by the regulators. If anything you have an added responsibility to clarify your interpretation of an FTA rule and you should welcome the opportunity to geek out with another trade compliance professional about a nuanced interpretation of a regulation.

Likewise solicitors, just because you are the customer does not mean you are always right. Stop badgering your suppliers with veiled or overt threats that you will discontinue doing business with them unless they respond using exactly the format, language or blanket period you demand. As the trade compliance person in your company everyone knows you don't have unilateral authority to terminate a supplier. Your threats are hollow. Plus they undermine the accuracy of the responses you get. See rule 5 below.

### **5. Do not lie**

Tell your clients what you know, not what you think they want to hear. I don't want to risk losing my customer's business so I'll just tell them a little white lie that my goods originate under the FTA. It's what they want to hear, right? After all, why else would they request the information from me?

Making an unsubstantiated FTA claim is not a little white lie. It is a fraud and puts you and your company at regulatory risk. Besides, you don't really know that your customer will discontinue buying from you. Heck, their threat is probably hollow anyway. See rule 4 above.

### **6. Admit when you're defeated**

Never kid a kidder. Trying to buffalo your way through an FTA response is an exercise in self-humiliation. You are going to expose your lack of experience and put yourself in an embarrassing situation.

If you don't know or can't prove that your goods originate, than admit it. "My good does not originate" is an appropriate response to an FTA solicitation request. Believe it or not, the people collecting FTA information within you customer's organization just want to know the truth.

If you learn that your clients really need your goods to qualify under an FTA I can recommend a consultant (see the byline above) who can help you out. [He also teaches a great NAFTA and FTA course.](#)

### **7. Manage your crew**

It is not uncommon for companies to hire third parties to facilitate the FTA solicitation and origination process. Like any outsourced trade compliance service, you should monitor their work to ensure the data they collect is accurate and that they represent your company professionally.

Understand that service providers will have limitations particularly when it comes to resolving discrepancies in the data you have shared with them. While you may outsource the lion's share of the FTA work to them, you will need to manage their interactions with and resolve issues with your supplier base.

### **8. Keep your cool**

Your on-hand inventory does not lose its FTA eligibility at the end of the year just because the blanket period on the certificate under which it shipped has ended. Under NAFTA and most of the other agreements, the inventory remains FTA valid for up to four years.

Yes, there is an urgency to get your FTA work done timely each year but take a deep breath and don't panic. Unless the manufacturer is shipping new inventory to you, you don't automatically need a new certificate of origin on January 1<sup>st</sup> of each year.

If you need some help keeping your cool, perhaps another ration of rum is in order?

### **9. Plunder one FTA at a time**

It's tempting make an all-inclusive statement about your goods originating under all free trade agreements at once. While it can be done, be careful. Just because your goods originate under one FTA does not mean they originate under all FTAs.

Also be cautious about making claims under agreements that are not yet in force. I am already seeing solicitation requests for the NAFTA replacement known as USMCA. It might be possible to make an accurate forward-looking statement. However many of the implementation rules and uniform regulations, particularly surrounding automotive, are yet to be promulgated. If you make any predictive statements about your goods and USMCA do so with a disclaimer.

### **10. Stick to the code**

NAFTA has a specific country of origin certificate format. Canada and the U.S. have been flexible in allowing for alternatives to that format as long as all of the data elements from the official form are present. Mexico, however, has been a stickler for requiring the official format.

If you are going to use any of the official formats, use them as designed without alteration. This includes the designated date formats. Of course when communicating FTA information between domestic parties it is common to alter the form. If you do so remove the official government form number.

Of course like any code of honor the above list is subject to interpretation. How you implement your FTA program is ultimately up to you. As they say in the Pirates of the Caribbean movies, "...the code is more what you'd call 'guidelines' than actual rules."

Trade on mateys! Aaarrgggghh!