

It's OK to Say "Nay" to an FTA

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We had a little fun [in a recent article](#) introducing the "NAFTA Opt-Out Voucher." After reading that article, you might have concluded that I am against participating in free trade agreements. Nothing could be further from the truth! I am a devotee of the benefits of FTAs.

As a proponent of free trade, it is my mission to teach people how to apply the programs to their best advantage. When used properly, FTAs can open markets for U.S exporters and contribute to the cost competitiveness of their goods. Importers, of course, can achieve sizeable duty savings and gain access to sources that might have been out of reach. With such strong incentives, who wouldn't want to opt in and participate?

One of the challenges of FTAs is the misperception that companies are obligated to participate in the agreement. This myth is perpetuated by importing customers and their service providers. Some companies may have made commercial obligations to participate in an FTA. Despite those commercial promises, there is nothing within any of the U.S. free trade agreements that obligates a company to participate.

Another weakness of FTAs is that the commercial benefits are so compelling some importers and exporters participate in them when they should not be doing so. Trade agreements are complex legal documents. They offer commercial benefits to traders while also imposing hefty regulatory compliance obligations on them.

A typical commercial FTA participant must establish a disciplined process. That process is built on the foundation of harmonized system classification. HS classification drives the method by which a good is evaluated for origination under the FTA. FTAs require companies to solicit information from producers of materials incorporated into the goods that will be exported. This solicitation process provides an audit trail that supports the origination of the good. Once a company has established a robust classification, solicitation and origination process it may progress to the final step. The last step, of course, is issuing a statement certifying that the goods originate and qualify for benefits under the FTA.

In other words, participants may not assume that goods originate under a trade agreement. Before issuing a certification of origination statement they must be able to prove that the goods qualify. Without this proof they should treat the goods as non-originating and subject to normal duties. With this complexity and regulatory burden in mind, there are a number of reasons a company would or should choose to opt out of a free trade agreement.

Reasons for opting out of FTAs

1. The company is not able or willing to make the investment in time and personnel to support its claims under the FTA. It does not see a corresponding benefit to offset the investment required to participate. This is a particularly difficult issue for smaller organizations that are not yet able to employ a dedicated trade compliance specialist.

2. The company views the regulatory risks of participation to be unacceptable in light of the benefits of participation.
3. Nobody in the company has been through formal FTA instruction or is capable of overseeing accurate participation in the agreement. Although the company might be willing to make the investment to participate, it should opt out until it is capable of doing so.
4. The goods are already duty free in the importing country. The FTA provides no additional benefit to the transaction. Claiming an FTA, however, might also exempt a good from incurring an import processing fee. Not all FTAs incorporate that benefit and not all countries charge import fees. If the good is already duty free, claiming the FTA becomes a waste of resources. If the good is a material or subcomponent within a larger supply chain, it still might make sense to participate as other parties along the supply chain may depend on origination to inform their own FTA processes.
5. Some companies have made the subjective decision to opt out of FTAs on principle. It bears repeating that there is nothing in any of the FTAs that legally compels a company to participate.
6. The participant learns that the goods do not qualify for participation in the program or it cannot positively identify that the goods do qualify under the program.

When opting out does not seem to be a choice.

You would think that opting out of FTA participation would be easy. As international traders in competitive markets we are often faced with customers, customs brokers or freight forwarders adamantly insisting that we must provide them a certification of origination. Under such pressure it is difficult to say no. Consider the following options.

1. **Try saying no.** You would be surprised how frequently a customer's request for FTA certification statements is misinterpreted as a demand to participate, "or else!" In reality they are asking if the goods originate or if they do not. When you let them know that a good does not originate, they usually are satisfied. This was the primary idea behind the spoof [NAFTA Opt-Out Voucher](#) from the previous article. Of course your message to your customer will be more professional and succinct. Customers get testy with you when you provide a flawed response or fail to respond at all.
2. **Try the partial opt out.** Some companies choose to originate only their top-selling goods. This allows them to minimize the administrative burden of maintaining an FTA program while maximizing customer satisfaction. It is not uncommon for companies to opt-out of FTA participation for small-value shipments such as aftermarket parts or accessories orders.
3. **Rethink your strategy and opt in.** If opting out of an FTA is costing your company business, perhaps it is time to rethink your cost/benefit analysis and to make the investment to develop a robust FTA program. I know a guy who can help you with that.