

NAFTA – The Annual Disaster of the Forms

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If you export goods under the NAFTA, how do you know they qualify for the program? As a NAFTA exporter your company has an obligation to determine if the goods it is exporting meet the NAFTA rules of origination. If your company did not manufacture the goods, it is necessary to identify the producer of those goods and to obtain a NAFTA certificate of origin or an equivalent manufacturer's affidavit from them showing that the goods originate. Based on this information you company can complete an export NAFTA certificate of origin to provide to its importing clients.

As a manufacturer, your company may also need to identify the producers of the materials that go into its manufactured goods and determine if those materials meet the NAFTA rules of origination.

The process of identifying the producers of goods or materials and requesting a NAFTA certificate is known as solicitation. The statements a producer makes may only cover goods and materials it ships within a one year period. As a result the process of solicitation is an annual event. Recipients of producer certificates and affidavits have an obligation to check the accuracy of the statements on their face before acting on them. This is where the challenge begins.

Too frequently goods and materials manufacturers, not being exporters and importers themselves, do not have trade compliance staff skilled in the NAFTA fundamentals of classification and origination. Despite this deficiency and in an effort to please their clients, these producers make an ill-fated effort to complete certificates of origin. Add to this the habit of distributors generating NAFTA statements, as if they were the producers of the goods and materials they are selling. Both result in undependable documents of doubtful value.

The most common mistake the uninitiated make when issuing a NAFTA declaration is to assume that a good made or purchased in North America automatically qualifies or originates under the NAFTA. Origination is a much higher standard than the "made in" label that is applied to goods.

Without a clearly documented paper trail, one that follows goods and materials back to the manufacturing producer, exporters are left to make what seems to be a devil's choice. They could take the risk of completing a NAFTA certificate of origin knowing full well that, if challenged, they will be unable to provide the documentation necessary to substantiate their claim. They could also opt out of the NAFTA resulting in their goods being subjected to normal duties and fees when imported in Canada and Mexico. Either choice has a real cost and neither is recommended. The first eventually results in regulatory intervention that brings with it fines and the penalty or having the company's NAFTA privileges suspended. The second results in the company's goods being priced out of the marketplace because of the additional duty burden.

There is an alternative to this annual disaster-of-the-forms, lose-lose scenario.

Companies, for whom NAFTA participation is important, take a more proactive approach. Before soliciting certificates of origin these companies offer training to their vendor base. This training covers the three fundamental skills within NAFTA including:

1. Classifying goods according to the harmonized system convention,
2. Originating goods according the rules of the NAFTA and
3. Completing the certificate of origin.

Some companies go so far as to host this training on behalf of their supplier base while other companies make it a requirement for the vendors to attend a public NAFTA seminar. As the old adage says, “the proof of the pudding is in the eating.” And so it is with this solution. Vendors that submit inaccurate certificates of origin are subjected to remediation and must take the seminar again.

This may seem like an unreasonable time-consuming demand. To the contrary! Within one day a participant in a public seminar can become reasonably proficient in the ways of the NAFTA. While NAFTA uses a unique vocabulary of preference criteria and regional value content, the concepts, are not that difficult to understand.

Those not willing to invest the upfront time to learn about the NAFTA have a simple solution. They can opt out altogether. There is nothing within the treaty or the U.S. law that compels anyone to participate in the program. This means, of course, that their importing customers must forgo the duty free benefits of the trade agreement. From a commercial perspective, opting out may be short sighted.

One thing is certain. If you attempt to complete a NAFTA certificate of origin without undergoing training, you will get it wrong. With a little forethought, however, companies can create better quality forms. With experience comes expertise that eventually does away with the annual disaster of the forms.

The choice is yours. You can wade through the annual disaster of the forms or you can be proactive and work to improve the condition of documents you receive from your suppliers.