

Ottawa, January 1, 1994

SUBJECT

**REGULATIONS RESPECTING
THE DETERMINATION OF WHEN GOODS
ARE ENTITLED TO THE BENEFIT OF
THE UNITED STATES TARIFF, MEXICO TARIFF
OR MEXICO-UNITED STATES TARIFF**

Short Title

1. These Regulations may be cited as the *NAFTA Tariff Preference Regulations*.

Interpretation

2. (1) In these Regulations,

"agricultural goods" means goods of any of Chapters 1 to 24, subheading Nos. 2905.43 and 2905.44, heading Nos. 33.01 and 35.01 to 35.05, subheading Nos. 3809.10 and 3823.60 and heading Nos. 41.01 to 41.03, 43.01, 50.01 to 50.03, 51.01 to 51.03, 52.01 to 52.03, 53.01 and 53.02, but does not include fish products; (*produits agricoles*)

"fish products" means fish, crustaceans, molluscs or other aquatic invertebrates, marine mammals, or products of any of those animals, that are goods of any of Chapter 3, heading Nos. 05.07, 05.08, 05.09, 05.11, 15.04, 16.03, 16.04 and 16.05 and subheading No. 2301.20; (*produits à base de poisson*)

"originating good" has the same meaning as in subsection 2(1) of the *NAFTA Rules of Origin Regulations*; (*marchandise originaire*)

"textile and apparel goods" means goods

(a) subject to paragraph (b), of a tariff provision set out in Appendix 1.1 of Annex 300-B to Chapter Three of the Agreement; and

(b) where "ex" is set out in the Appendix referred to in paragraph (a), of tariff item No. 3921.12.10, 3921.13.10, 3921.90.10, 4202.12.10, 4202.22.10, 4202.32.10, 4202.92.11, 4202.92.12, 4202.92.19, 6405.20.10, 6406.10.11, 6406.99.30, 7019.10.21, 7019.10.22, 9404.90.20 or 9612.10.10. (*textiles et vêtements*)

(2) Where the origin of goods is being determined under the *NAFTA Rules of Origin Regulations*,

(a) for the purpose of determining whether the goods are

entitled to the benefit of the *United States Tariff* under paragraph 3(a),

- (i) "NAFTA country" in those Regulations shall mean the United States or Canada, and
- (ii) "received in the territory of a NAFTA country" in those Regulations shall mean "received in the territory of a NAFTA country" as defined in section 8 of those Regulations without reference to paragraph (b) of that definition; and

(b) for the purpose of determining whether the goods are entitled to the benefit of the *Mexico Tariff* under paragraph 4(a),

- (i) "NAFTA country" in those Regulations shall mean Mexico or Canada, and
- (ii) "received in the territory of a NAFTA country" in those Regulations shall mean "received in the territory of a NAFTA country" as defined in section 8 of those Regulations without reference to paragraph (c) of that definition.

General

3. Goods are entitled to the benefit of the United States Tariff where

(a) in the case of goods other than agricultural goods and textile and apparel goods,

- (i) the goods are originating goods, or
- (ii) the goods, subsequent to production that qualifies them as originating goods under section 4 of the *NAFTA Rules of Origin Regulations*, undergo further production in Mexico, the value of which equals not more than 6.5421 per cent of the value for duty of the goods when they are imported into Canada; or

(b) in the case of agricultural goods and textile and apparel goods,

- (i) the goods are originating goods, and
- (ii) the goods are eligible to be marked as goods of the United States in accordance with the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*.

4. Goods are entitled to the benefit of the *Mexico Tariff* where

(a) in the case of goods other than agricultural goods and textile and apparel goods,

(i) the goods are originating goods, or

(ii) the goods, subsequent to production that qualifies them as originating goods under section 4 of the *NAFTA Rules of Origin Regulations*, undergo further production in the United States, the value of which equals not more than 6.5421 per cent of the value for duty of the goods when they are imported into Canada; or

(b) in the case of agricultural goods and textile and apparel goods,

(i) the goods are originating goods, and

(ii) the goods are eligible to be marked as goods of Mexico in accordance with the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*.

5. Goods, other than agricultural goods and textile and apparel goods, are entitled to the benefit of the *Mexico-United States Tariff* where the goods are originating goods that are not entitled to the benefit of the *United States Tariff* or the *Mexico Tariff* under paragraph 3(a) or 4(a).

GUIDELINES AND GENERAL INFORMATION

1. In the Canadian *Customs Tariff*, the complete NAFTA tariff elimination will take place over ten years. Tariffs on some goods will drop to duty free January 1, 1994. Other goods will have their tariffs eliminated in equal annual stages over five-, six- and ten-year periods. There are also certain goods that will have their tariffs eliminated over eight years in unequal stages.

2. There are three NAFTA tariff treatments during the transition period. The *United States Tariff (UST)*, established under the Canada-U.S. Free Trade Agreement, has been incorporated into the NAFTA. The *Mexico Tariff (MT)* and the *Mexico-United States Tariff (MUST)* have been created.

3. All UST rates of duty will be free January 1, 1998, as agreed in the *Canada-U.S. Free Trade Agreement*.

4. MT and MUST rates of duty are determined by taking the "base rate" and reducing it in accordance with the "staging category". A base rate is the tariff rate before any elimination begins. The rate of duty is the actual rate that will be applied to imported goods. For example, a tariff item that has a base rate of 25% and a five-year staging category has a 20% rate of duty in NAFTA's

first year.

5. Base rates for the MT are (for the most part) the *General Preferential Tariff* (GPT) rates as of July 1, 1991. If no GPT rate existed for a given product on July 1, 1991, the MT base rate for that product is the *Most Favoured Nation Tariff* (MFN) rate.

6. Base rates for the MUST were negotiated on a case-by-case basis.

7. Rates of duty are rounded down to the nearest tenth of a percentage point or the nearest tenth of a cent.

8. Each year, the rates of duty in effect for that year will be published in the Customs Tariff Office Consolidation.

9. Importers coding customs documents will use tariff treatment 10 for UST, 11 for MT and 12 for MUST.

Tariff Treatment Determination

10. In order to know which tariff treatment should be applied to goods imported from a NAFTA country, two levels of origin determination must be made. First the goods must originate in accordance with the NAFTA Rules of Origin in the Memorandum D11-5 series. Once it is established that the goods originate, a determination must also be made as to whether UST, MT or MUST is applicable.

11. Goods are entitled to the UST when the goods satisfy the NAFTA Rules of Origin in the Memorandum D11-5 series considering only U.S. and Canadian materials as originating. That is, if Mexico is treated as a non-NAFTA country and the goods still originate, the goods are eligible for UST. There is a "Country of Origin" field on the Certificate of Origin in which exporters or producers will put US if the goods are eligible for UST.

12. Subsequent to production that qualifies the goods for UST, they will retain UST status if they undergo processing in Mexico, the value of which equals not more than 6.5421% of the value for duty of the goods when they are imported into Canada or the Mexican processing does not increase the transaction value of the goods by more than 7%.

The percentage that may not exceed 6.5421 will be calculated as:

$$\frac{\text{value of processing in Mexico}}{\text{value for duty of goods imported into Canada}} \times 100$$

or

The percentage that may not exceed 7 will be calculated as:

(transaction value of goods after processing in Mexico) -
(transaction value of goods prior to processing in Mexico) x 100
transaction value of goods prior to processing in Mexico

13. Goods are entitled to the MT when the goods satisfy the NAFTA Rules of Origin in the Memorandum D11-5 series considering only Mexican and Canadian materials as originating. That is, if the United States is treated as a non-NAFTA country and the goods still originate, the goods are eligible for MT treatment. There is a "Country of Origin" field on the Certificate of Origin in which exporters or producers will put MEX if the goods are eligible for the MT.

14. Subsequent to production that qualifies the goods for MT, they will retain MT status if they undergo processing in the United States, the value of which equals not more than 6.5421% of the value for duty of the goods when they are imported into Canada, **or** the United States processing does not increase the transaction value of the goods by more than 7%.

The percentage that may not exceed 6.5421 will be calculated as:

value of processing in the U.S. x 100
value for duty of goods imported into Canada

or

The percentage that may not exceed 7 will be calculated as:

(transaction value of goods after processing in the U.S.) -
(transaction value of goods prior to processing in the U.S.) x
100
transaction value of goods prior to processing in the U.S.

15. If goods that satisfy the NAFTA Rules of Origin in the Memorandum D11-5 series are not eligible for either UST or MT, then MUST is to be applied. If goods are eligible for MUST, exporters or producers will put JNT (for joint production) in field 10 of the Certificate of Origin. Where MUST is applied, the country in which the goods were substantially produced is to be declared as the country of origin.

16. Paragraphs 11-15 are not to be used for determining the tariff treatment of agricultural, textile and apparel goods. There are special provisions for these goods which are explained in paragraphs 18-26.

17. If the "Country of Origin" field on the certificate is incomplete or cannot be verified, Customs would not necessarily conclude that the whole certificate is invalid. If Customs is satisfied that the goods meet the NAFTA Rules of Origin, but cannot determine in which country the goods originate, Customs

will not adjust the tariff treatment to MFN, but rather to the highest of the NAFTA rates applicable to that tariff item. More information on the Certificate of Origin is printed in Memorandum D11-4-14, *Certification of Origin*.

Agricultural Goods

18. Agricultural goods are defined on page 1.

19. For agricultural goods, no MUST treatment exists. Agricultural goods that are wholly produced in one NAFTA country will receive the appropriate tariff treatment (UST or MT) for the country in which they are wholly produced.

20. The determination of whether originating agricultural goods that are jointly produced by the United States and Mexico will receive the UST or the MT will be made according to the country of origin marking rules found in Memorandum D11-3-1, *Marking of Imported Goods*. This does not necessarily mean that all agricultural goods are required to be marked with the country of origin, only that the UST or MT will be applied according to the country for which they are entitled to be marked, regardless of whether or not they actually are marked.

21. Tariff rate quotas apply to tariff item Nos. 0603.10.90, 0702.00.91, 0703.10.31, 0707.00.91, 0710.80.20, 0811.10.10, 0811.10.90 and 2002.90.00 when the goods originate in Mexico. To obtain the benefit of the MT when imports have not reached the annual quota, importers will account for their goods using the appropriate tariff item, the related Schedule II code and tariff treatment 11 (MT). When the imports of each of these goods originating from Mexico reach the quota level, further imports in that calendar year will be entered at the MFN rate.

22. Dairy, poultry and egg goods (goods falling under supply management conditions) that originate in Mexico will not receive any NAFTA tariff preference.

23. Sugar and sugar syrup goods that originate in Mexico are not subject to duty phase out. On these goods (except 1806.10.10), the MT rate of duty is equal to the MFN rate. For cocoa powder containing 90% or more by weight of sugar (1806.10.10), the MT rate of duty is fixed equal to the GPT rate on July 1, 1991.

Textile and Apparel Goods

24. Textile and apparel goods are listed in Appendix A, which is a reprint of Appendix 1.1 of Annex 300-B to Chapter 3 of NAFTA.

25. For textile and apparel goods, no MUST treatment exists. Textile and apparel goods that are wholly produced in one NAFTA country will receive the appropriate tariff treatment (UST or MT) for the country in which they are wholly produced.

26. The determination of whether originating textile and apparel goods that are jointly produced by the United States and Mexico will receive the UST or the MT will be made according to the country of origin marking rules found in Memorandum D11-3-1 and Customs Notice 843. This does not mean that all textile and apparel goods are required to be marked with the country of origin, only that the UST or MT will be applied according to the country for which they are entitled to be marked, regardless of whether or not they actually are marked.

27. If cotton, man-made fibre or wool apparel of Chapter 61 or 62 are made from fabric or yarn produced or obtained outside the NAFTA territory, they will fail to satisfy the *NAFTA Rules of Origin Regulations*, Memorandum D11-5-1, and be considered non-originating goods. Despite being non-originating goods, if such goods of Chapter 61 or 62 are both cut and sewn (or otherwise assembled or knit to shape) in the territory of **one** NAFTA country, i.e. Mexico or United States, on importation into Canada, they may receive the NAFTA tariff treatment applicable to the country in which they were both cut and sewn (or otherwise assembled or knit to shape). This provision is available up to an annual quantity called a **tariff preference level** (TPL). The annual quantity is contained in Schedule 6.B.1 to Appendix 6 of Annex 300-B to Chapter 3 of NAFTA.

28. If cotton or man-made fibre fabric and made-up goods provided for in Chapters 52 to 55 (excluding goods containing 36% or more by weight of wool or fine animal hair), 58, 60 and 63, are woven or knit from yarn produced or obtained outside the NAFTA territory, or are knit from yarn spun in the NAFTA territory from fibre produced or obtained outside the NAFTA territory, they will fail to satisfy the *NAFTA Rules of Origin Regulations*, Memorandum D11-5-1, and be considered non-originating goods. Despite being non-originating goods, if such goods are woven or knit in the territory of **one** NAFTA country, they may receive the NAFTA tariff treatment applicable to the country in which they were woven or knit. Similarly, if non-originating bedding and furnishings of 9404.90.20 are finished and cut and sewn or otherwise assembled in the territory of **one** NAFTA country from non-originating fabrics of 5208.11 to 5208.29, 5209.11 to 5209.29, 5210.11 to 5210.29, 5211.11 to 5211.29, 5212.11, 5212.12, 5212.21, 5212.22, 5407.41, 5407.51, 5407.71, 5407.81, 5407.91, 5408.21, 5408.31, 5512.11, 5512.21, 5512.91, 5513.11 to 5513.19, 5514.11 to 5514.19, 5516.11, 5516.21, 5516.31, 5516.41 or 5516.91, they may receive the NAFTA tariff treatment applicable to the country in which they were finished and cut and sewn or otherwise assembled. This provision is available up to an annual quantity called a **tariff preference level**. The annual quantity is specified in Schedule 6.B.2 to Appendix 6 of Annex 300-B to Chapter 3 of NAFTA. Please note that **for importations from the United States**, the tariff preference level referred to in the foregoing applies only to goods of Chapter 60 (Reference: footnote 1 to Schedule 6.B.2).

29. If cotton or man-made fibre yarns of heading Nos. 52.05 to 52.07 or 55.09 to 55.11 are spun from fibres produced or obtained outside the NAFTA territory, they will fail to satisfy the *NAFTA Rules of Origin Regulations*, Memorandum D11-5-1, and be considered non-originating goods. Despite being non-originating goods, if such yarns are spun in the territory of a NAFTA country from non-originating fibre of heading Nos. 52.01 to 52.03 or 55.01 to 55.07, they may receive the NAFTA tariff treatment applicable to the country in which they were spun. This provision is available up to an annual quantity called a **tariff preference level**. The annual quantity is specified in Schedule 6.B.3 to Appendix 6 of Annex 300-B to Chapter 3 of NAFTA.

30. To obtain the benefits of the preferential duty rates accorded under NAFTA for these textile and apparel goods, i.e. TPL goods, the importer makes a declaration on form B 3, *Canada Customs Coding Form*, that he has in his possession a certification from the exporter that contains the information identified in Appendix B. To make that declaration, the importer inserts in Field No. 11 of the accounting document, form B 3, the appropriate numerical code, i.e. code 10 for *United States Tariff* (UST) or code 11 for *Mexico Tariff* (MT). The certification statement contained in Appendix B must be in the importer's possession at the time of release and must be available to Customs upon request. The NAFTA Certificate of Origin is not required for these goods since they are not originating.

31. Where textile and apparel goods, eligible for the TPL treatment, are imported from Mexico, for each shipment, the Mexican exporter must first obtain a Certificate of Eligibility from the Mexican government. This allows the exporter to export under the tariff preference level. When the Canadian importer applies for the import permit from the Department of Foreign Affairs and International Trade, the Mexican Certificate of Eligibility must be available. There is no such requirement for textile and apparel goods eligible for the TPL treatment, exported from the United States.

32. The importer must in all cases obtain an import permit from the Department of Foreign Affairs and International Trade for TPL goods, as well as for textile goods originating or not, which are included on the Import Control List. To obtain an application for an import permit or for further information on import permits contact:

Export and Import Permits Bureau
Department of Foreign Affairs and International Trade
P.O. Box 481, Station A
Ottawa, Ontario
K1N 9K6

Telephone: 613 996-3711
Fax: 613 995-5137

APPENDIX A

APPENDIX A

**List of Textile and Apparel Goods
Liste des produits textiles et vêtements**

Chapter / Chapitre 30

3005.90

Chapter / Chapitre 39

3921.12.10

3921.13.10

3921.90.10

Chapter / Chapitre 42

4202.12.10.

4202.22.10

4202.32.10

4202.92.11

4202.92.12

4202.92.19

Chapter / Chapitre 50

5004.00

5005.00

5006.00

5007.10

5007.20

5007.90

Chapter / Chapitre 51

5105.10

5105.21

5105.29

5105.30

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Chapter / Chapitre 52

5203.00
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Chapter / Chapitre 53

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Chapter / Chapitre 54

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Chapter / Chapitre 55

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Chapter / Chapitre 56

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Chapter / Chapitre 57

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Chapter / Chapitre 58

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Chapter / Chapitre 59

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Chapter / Chapitre 60

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Chapter / Chapitre 61

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6111.30
6111.90
6112.11
6112.12
6112.19
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6112.31
6112.39
6112.41
6112.49
6113.00
6114.10
6114.20
6114.30
6114.90
6115.11
6115.12
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6115.99
6116.10
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6117.10
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6117.80
6117.90

Chapter / Chapitre 62

6201.11
6201.12
6201.13
6201.19
6201.91
6201.92
6201.93
6201.99
6202.11
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6204.59
6204.61
6204.62
6204.63
6204.69
6205.10
6205.20
6205.30
6205.90
6206.10
6206.20
6206.30
6206.40
6206.90
6207.11
6207.19
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6207.22
6207.29
6207.91
6207.92
6207.99
6208.11
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6208.22
6208.29
6208.91
6208.92
6208.99
6209.10
6209.20
6209.30
6209.90
6210.10
6210.20
6210.30
6210.40
6210.50
6211.11
6211.12
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6212.10
6212.20
6212.30
6212.90
6213.10
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6213.90
6214.10
6214.20
6214.30
6214.40
6214.90
6215.10
6215.20
6215.90
6216.00
6217.10
6217.90

Chapter / Chapitre 63

6301.10
6301.20
6301.30
6301.40
6301.90
6302.10
6302.21
6302.22
6302.29
6302.31
6302.32
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6302.51
6302.52
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6302.92
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6304.11
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6305.10
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6305.90
6306.11
6306.12
6306.19
6306.21
6306.22
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6306.31
6306.39
6306.41
6306.49
6306.91
6306.99
6307.10
6307.20
6307.90
6308.00
6309.00

Chapter/ Chapitre 64

6405.20.10
6406.10.11
6406.99.30

Chapter / Chapitre 65

6501.00
6502.00
6503.00
6504.00
6505.90

Chapter / Chapitre 66

6601.10
6601.91
6601.99

Chapter 70 / Chapitre

7019.10.21

7019.10.22
7019.20

Chapter / Chapitre 87

8708.21

Chapter / Chapitre 88

8804.00

Chapter / Chapitre 91

9113.90

Chapter / Chapitre 94

9404.90.20

Chapter / Chapitre 95

9502.91

Chapter / Chapitre 96

9612.10.10

Woven ribbons, of synthetic fibres, other than those less than 30 mm wide and permanently in cartridges / Rubans tissés, en matières synthétiques ou artificielles, autres que ceux de moins de 30 mm de largeur, en cartouches

APPENDIX B

ANNEXE B

APPENDIX B

ANNEXE B

**EXPORTER'S CERTIFICATION OF
NON-ORIGINATING TEXTILE GOODS**

I, the exporter of the textile or apparel goods referred to in the attached invoice or sales agreement, hereby certify that those goods comply with the requirements specified in respect of those goods in Appendix 6 of Annex 300-B to Chapter Three of the North American Free Trade Agreement.

NAME:

TITLE:

COMPANY:

TELEPHONE:

FAX:

Signature of exporter Date

**ATTESTATION DE L'EXPORTATEUR DE TEXTILES
OU DE VÊTEMENTS NON ORIGINAIRES**

Je soussigné, exportateur des textiles ou vêtements mentionnés dans le document — facture ou contrat de vente — ci-joint, atteste que ces marchandises sont conformes aux exigences spécifiées à leur égard à l'appendice 6 de l'annexe 300-B du chapitre 3 de l'Accord de libre-échange nord-américain.

NOM :

TITRE :

ENTERPRISE :

TÉLÉPHONE :

TÉLÉCOPIEUR

:

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Signature de l'exportateur

Date