

What Are The Procedures For FTA Origin Verifications in Canada?

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On May 12, 2016, the Canada Border Services Agency (“CBSA”) released revised D-Memorandum D11-4-20 “Procedures for Verifications of Origin Under Free Trade Agreements”. The overall objective of a free trade agreement verification is to confirm that products covered by a certificate of origin completed by the exporter or producer qualify as originating in accordance with the applicable free trade agreement.

D-Memorandum D-11-4-20 outlines and explains the verification procedures pursuant to:

- Sections 42 and 97.201 of the *Customs Act* and various regulations promulgated thereunder,
- Article 506 of the North American Free Trade Agreement (NAFTA),
- Article E-06 of the Canada-Chile Free Trade Agreement (CCFTA),
- Article 5.6 and Annex 5.6.2 of the Canada-Israel Free Trade Agreement (CIFTA),
- Article V.6 of the Canada-Costa Rica Free Trade Agreement (CCRFTA),
- Article 406 of the Canada-Peru Free Trade Agreement (CPFTA),
- Article 406 of the Canada-Colombia Free Trade Agreement (CCOFTA),
- Article 24 of Annex C of the Canada-European Free Trade Association Free Trade Agreement (CEFTA), and
- Article 5-6 of the Canada-Jordan Free Trade Agreement (CJFTA).

The verification procedures are not identical under each free trade agreement and, therefore, the applicable free trade agreement is important to determine at the onset. D-Memorandum is organized by Appendix setting out the procedures for verifications under the free trade agreements.

Record Keeping Requirements

When an importer claims a preferential rate of customs duty pursuant to a free trade agreement, the CBSA may want to verify that the preferential rate is available (that is, the good is originating in the free trade partner). The process requires that importers be in possession of a valid exporter’s Certificate of Origin. The certificate of origin and supporting documentation record-keeping requirements for importers and exporters are as follows:

- Canada, are for a period of not less than **six years**
- United States, are for a period of not less than **five years**
- Mexico, are for a period of not less than **five years**

- Chile, are for a period of not less than **five years**
- Israel, are for a period of not less than **five years**
- Costa Rica, are for a period of not less than **five years**
- Peru, are for a period of not less than **five years**
- Colombia, are for a period of not less than **five years**
- An European Free Trade Association (EFTA) country (Iceland, Norway, Switzerland and Liechtenstein), are for a period of not less than **three years**
- Jordan, are for a period of not less than **five years**

Manner of Conducting Verifications

A verification may be conducted by the CBSA and foreign customs administrations according to the manners set out in the applicable free trade agreement. As a general rule, the CBSA may undertake verifications of origin with respect to goods imported into Canada. This may be done by seeking information from the importer or conducting a verification of the records of the exporter (or a foreign producer).

As a general rule, the options for conducting a verification are as follows:

Applicable FTA	Verification Questionnaire	Verification Letter	Visits to premises	Other methods Agreed by Parties
NAFTA	Yes	Yes	Yes	Yes
CCFTA	Yes	Yes	Yes	Yes
CIFTA	Yes	No	Yes	No
CCRFTA	Yes	Yes	Yes	Yes
CPFTA	Yes	Yes	Yes	Yes
CCOFTA	Yes	Yes	Yes	Yes
CJFTA	Yes	Yes	Yes	Yes
CEFTA	No	No	No	No

The Canada-EFTA FT is unique in that the CBSA must request that the customs official of the applicable EFTA country of export conduct the verification on Canada's behalf and provide an opinion as to whether the goods are originating.

D-Memorandum D11-4-20 "Procedures for Verifications of Origin Under Free Trade Agreements" sets out details concerning what each of these manners of verification entails.

Verification Questionnaires and Letters

Verification questionnaires and verification letters are the most common form of verification. Usually, the CBSA sends a request for information about selected transactions. If the CBSA is satisfied that the transactions involve goods that are originating, they may not ask for further information for the importer, exporter or foreign producer. Even if the CBSA is satisfied with the information, they may request a verification visit to verify that the information provided is correct. If the CBSA has concerns, they usually request an on-site verification visit as the next step in the process. Sometimes it is difficult to know whether the CBSA has concerns or not before the verification visit. For this reason, it is beneficial to gather documents carefully and review the documentation with a knowledgeable advisor who understands the applicable rule of origin.

Verification Visits

Verification visits are the most intrusive because the CBSA will visit the premises of the importer or exporter. If the CBSA is going to travel to foreign soil to conduct the verification, there are procedures that the CBSA must follow. The CBSA cannot just show up at the door of an exporter in Texas, for example. If the CBSA is conducting a verification of a foreign exporter or producer of the imported goods, the CBSA must send written notification of the intent to conduct a verification visit. The notification must be sent to the person whose premises are the subject of the verification visit and the customs administration of the country in which the verification visit will take place. With respect to many FTAs, the CBSA may also be required to notify the Embassy (location in Canada) of the country in which the verification visit will take place.

Observers

Most of Canada's FTA permit observers to be present during the on-site verification visit. An observer may be a lawyer, a customs broker, an other outside advisor. While most FTAs indicate that the observer may not participate and may only observe, it is our experience that observers may facilitate the process and the customs officials welcome involvement so long as it is not obstructionist.

Negative Verifications

D-Memorandum D11-4-20 “Procedures for Verifications of Origin Under Free Trade Agreements” sets out what may happen if the verification does not go well. For example, if an exporter does not consent to a verification in 30 days, the goods will be considered to be non-originating. If an exporter denies access to books and records (or fails to maintain books and records), the goods will be considered to be non-originating. If an exporter fails to respond to questions after the verification (or fails to answer follow-up questions), the goods will be considered to be non-originating. Where the CBSA determines that goods are non-originating, the CBSA must send the exporter a written statement.

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