

## Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

# Why Are Companies Not Taking Advantage of FTA Benefits?

By Cyndee Todgham Cherniak on November 6th, 2015

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According to a Thomson Reuters-KPMG International Survey/Report, 70% of multi-national companies surveyed are not fully utilizing the benefits under existing free trade agreements (FTAs). A problem has been reported to be complex and disparate compliance requirements in home jurisdictions and other jurisdictions.

As an international trade lawyer, I hear this often. Many North American multi-national companies do not claim NAFTA benefits when importing goods from another NAFTA Party. This is because the act of claiming NAFTA tariff treatment allows customs officials to come and visit. The completion of a certificate of origin permits customs officials to visit an exporter and that exporter will be required to prove that the good meets the NAFTA rule of origin. To prove to another Party's customs officials that a good satisfies a rule of origin requires documentation to be maintained and provided. Sensitive costing information may need to be reviewed. Documents relating to sensitive commercial relationships may need to be reviewed. The secret formula may have to be provided. Some companies say "Why bother?" and they avoid the trouble that NAFTA treatment will bring. Instead, they chose to not seek NAFTA beneficial treatment and importers pay more customs duties for the goods.

Furthermore, many small-to-medium sized businesses do not have and cannot afford to implement solutions to manage vast amounts of information. Many companies use manual processes rather than computerized solutions. Customized computer programs are expensive (and you have to keep documentary records in any event). Since the rules are not the same under each FTA and new FTAs are being negotiated constantly, the computerized program is complex to start with and may be outdated soon after implementation.

These issues are complex and become more complicated with each FTA. However, as companies avoid taking the first steps, they get further and further behind.

The first step in getting started is to identify where cost (customs duties) savings are possible in the supply chain. Then the cost savings should be quantified. Then the budget can be developed to bring about the simple changes. As time goes on, more changes can be made.

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