



# Memorandum D11-4-19

Ottawa, November 18, 2020

## The Determination of When Goods are Entitled to the Benefit of the United States Tariff, Mexico Tariff or Mexico-United States Tariff under NAFTA

### In Brief

1. The title of this memorandum has been changed since the Mexico-United States Tariff (MUST) used under the North American Free Trade Agreement (NAFTA) cannot be used for the Canada-United States-Mexico Agreement (CUSMA). The MUST will remain in place in the interim, for adjustments pertaining to importations that occurred while the NAFTA was in effect.
2. The editing revisions made in this memorandum do not affect or change any of the existing policies or procedures.

This memorandum provides a link to the Department of Justice for the official version of the *NAFTA Tariff Preference Regulations* (short title for *Regulations Respecting the Determination of When Goods are Entitled to the Benefit of the United States Tariff, Mexico Tariff or Mexico-United States Tariff*) that are used to determine whether goods imported from a North American Free Trade Agreement (NAFTA) country are entitled to the benefit of a preferential tariff treatment under the NAFTA and if so, which NAFTA tariff treatment should be applied to these goods.

This memorandum also contains a link to the NAFTA on the Global Affairs Canada Web site where the List of Goods Covered by Annex 300-B may be found.

This memorandum also contains guidelines and general information respecting the *NAFTA Tariff Preference Regulations*.

### Legislation

[North American Free Trade Agreement \(NAFTA\)](#)  
[NAFTA Tariff Preference Regulations](#)  
[NAFTA Rules of Origin Regulations](#)

### Guidelines and General Information

1. There are three NAFTA tariff treatments: the United States Tariff (UST), the Mexico Tariff (MT) and the Mexico-United States Tariff (MUST).
2. Importers will use tariff treatment 10 for UST, 11 for MT and 12 for MUST, on accounting documents.

#### Tariff Treatment Determination

3. In order to determine which preferential tariff treatment should be applied to eligible goods imported from a NAFTA country, two levels of origin determination must be made. First, the goods must be originating in accordance with the *NAFTA Rules of Origin Regulations*. Once it is established that the goods originate, a determination must also be made as to whether UST, MT or MUST is applicable as provided for in the *NAFTA Tariff Preference Regulations*.

4. Goods are entitled to the UST when they satisfy the *NAFTA Rules of Origin Regulations* considering only United States (US) and Canadian materials as originating. That is, if materials of Mexican origin are considered as non-originating and the goods still originate, the goods are eligible for UST. When completing a NAFTA Certificate of Origin, US will be indicated in field number 10 if the goods are eligible for the UST.

5. Subsequent to production that qualifies the goods for UST, the goods will retain UST status if they undergo further 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:

$$\frac{(\text{transaction value of goods after processing in Mexico}) - (\text{transaction value of goods prior to processing in Mexico})}{\text{transaction value of goods prior to processing in Mexico}} \times 100$$

6. Goods are entitled to the MT when they satisfy the *NAFTA Rules of Origin Regulations* considering only Mexican and Canadian materials as originating. That is, if the materials of US origin are considered as non-originating and the goods still originate, the goods are eligible for MT treatment. When completing a NAFTA Certificate of Origin, MEX will be indicated in field number 10 if the goods are eligible for the MT.

7. Subsequent to production that qualifies the goods for MT, they will retain MT status if they undergo further 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:

$$\frac{\text{value of processing in the U.S.}}{\text{value for duty of goods imported into Canada}} \times 100$$

or the percentage that may not exceed 7 will be calculated as:

$$\frac{(\text{transaction value of goods after processing in the U.S.}) - (\text{transaction value of goods prior to processing in the U.S.})}{\text{transaction value of goods prior to processing in the U.S.}} \times 100$$

8. If goods that qualify as originating under the *NAFTA Rules of Origin Regulations* 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.

9. Paragraphs 4-8 of this memorandum do not apply to agricultural, textile and apparel goods. There are special provisions for these goods which are explained in paragraphs 11-17 of this memorandum.

10. If the "Country of Origin" field on the certificate is incomplete or cannot be verified, the Canada Border Services Agency (CBSA) will not necessarily conclude that the whole certificate is invalid. The CBSA will provide an importer up to five business days to obtain a revised Certificate of Origin from the exporter. If the CBSA is satisfied that the goods meet the NAFTA Rules of Origin, but cannot determine in which country the goods originate, the CBSA 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 contained in Memorandum D11-4-14, Certification of Origin.

### **Agricultural Goods**

11. Agricultural goods are defined under subsection 2(1) of the *NAFTA Tariff Preference Regulations*.

12. 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.

13. 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 as explained in Memorandum D11-3-3, NAFTA Country of Origin Marking Rules. This does not necessarily mean that all agricultural goods are required to be marked with the country of origin. For agricultural goods, the marking rules are used to determine the tariff treatment that will be applied regardless of whether or not they are required to be marked.

14. Dairy, poultry and egg goods (goods falling under supply management conditions) that originate in Mexico are not eligible for a NAFTA tariff preference.

### **Textile and Apparel Goods**

15. Textile and apparel goods are listed in the List of Goods Covered by Annex 300-B as found in Appendix 1.1 of Annex 300-B to Chapter 3 of NAFTA.

16. 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.

17. 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 explained in Memorandum D11-3-3. This does not mean that all textile and apparel goods are required to be marked with the country of origin. For textile and apparel goods the marking rules are used to determine the tariff treatment that will be applied regardless of whether or not they are required to be marked.

18. If cotton, man-made fibre or wool apparel goods of Chapter 61 or 62 are made from fabric or yarn that is produced or obtained from outside the NAFTA territory, they will fail to satisfy the tariff change requirement of *NAFTA Rules of Origin Regulations* and will be considered to be 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, they may be entitled to 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 under the conditions of the tariff preference levels (TPL) provisions in Schedule 6.B.1 to Appendix 6 of Annex 300-B to Chapter 3 of NAFTA.

19. 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), and 58, 60 and 63, are woven or knit from yarn that is produced or obtained from outside the NAFTA territory, they will fail to satisfy the tariff change requirement of *NAFTA Rules of Origin Regulations* and will be considered to be non-originating goods. Such goods knit from yarn spun in the NAFTA territory from fibre produced or obtained outside the NAFTA territory will also be non-originating. Despite being non-originating goods, if such goods are woven or knit in the territory of a NAFTA country, they may be entitled to 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 5211.20, 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 TPL. The annual quantities are set out 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 TPL referred to in the foregoing applies only to goods of Chapter 60 (Reference: footnote 1 to Schedule 6.B.2).

20. 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 tariff change requirement of *NAFTA Rules of Origin Regulations* and will 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 be entitled to the NAFTA tariff treatment applicable to the country in which they were

spun. This provision is available up to an annual TPL. The annual quantities are set out in Schedule 6.B.3 to Appendix 6 of Annex 300-B to Chapter 3 of NAFTA.

21. For further information on how to obtain the benefits of the preferential duty rates accorded under the NAFTA using the TPL mechanism, refer to Memorandum D11-4-22, Tariff Preference Levels.

22. The importer must in all cases obtain an import permit from Global Affairs Canada for TPL goods, as well as for textile goods originating or not, which are listed on the Import Control List. To obtain an application for an import permit or for further information on import permits contact the Trade Controls Bureau at Global Affairs Canada.

### **Additional Information**

23. For more information, call contact the [CBSA Border Information Service](#) (BIS):

Calls within Canada & the United States (toll free): **1-800-461-9999**

Calls outside Canada & the United States (long distance charges apply):

1-204-983-3550 or 1-506-636-5064

TTY: **1-866-335-3237**

[Contact Us online](#) (webform)

[Contact Us](#) at the CBSA website.

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	
<b>Legislative References</b>	<a href="#"><i>North American Free Trade Agreement (NAFTA)</i></a> <a href="#"><i>NAFTA Tariff Preference Regulations</i></a> <a href="#"><i>NAFTA Rules of Origin Regulations</i></a>
<b>Other References</b>	<a href="#">D11-3-3</a> , <a href="#">D11-4-14</a> , <a href="#">D11-4-22</a>
<b>Superseded Memorandum D</b>	D11-4-19 dated April 7, 2014