



RUSSELL A. FARROW LIMITED

A FARROW COMPANY

CUSTOMS · LOGISTICS · SYSTEM SOLUTIONS · GLOBAL SERVICE

## **DUTY FREE**

### **NAFTA Tariff Preference versus Most Favoured Nations**

April 16, 2010

*The following is compiled by Russell A. Farrow Limited.*

Are there pros and cons in deciding whether or not to obtain a North American Free Trade Agreement (NAFTA) Certificate of Origin on goods that are duty free under the Most Favoured Nations (MFN) tariff treatment?

This is an excellent question and one that I have consistently answered the same way since 1994 when NAFTA became a reality.....**always claim NAFTA Preference whenever goods qualify, regardless of their dutiable status under MFN.** There are several reasons:

1. NAFTA is duty free and it is highly unlikely that rates will increase.
2. The goods could be reclassified to a tariff item that is not duty free under MFN. Since January 1, 1998, **Customs have had four years within which to re-determine the tariff classification** (in addition to the value for duty and tariff treatment). That's a long way to go back and it could be very costly and, even if you succeed in the appeal process, the situation could place a significant strain on your financial stability. **The one year time limit within which to claim NAFTA Preference is still in effect.**
3. MFN rates could increase (e.g.: the result of a trade war). Although the general trend is toward lower rates of duty, increases have occurred several times through the years.
4. If you enter NAFTA goods / materials under MFN, use them to manufacture a product and subsequently export the finished product to a NAFTA country, you must treat those goods/materials as non-originating. That detail could disqualify the finished product from NAFTA preference.

You may be saying "That won't happen" or "That won't happen to me!", but that's not the reality; it is happening and, in recent months we have seen **an increase in exactly the scenario outlined in point 2.** Points 3 and 4 may be less likely to happen or impact you severely but they can't be ruled out. Having a piece of paper and using NAFTA preferential tariff treatment (TT) 10 almost guarantees that it won't. If nothing else, **having a valid NAFTA Certificate of Origin is cheap insurance.**

As I mentioned earlier I have been "preaching" this message for many years, both in the office and to as many clients as opportunity provides. A few days ago I was reading a news bulletin from noted trade lawyer Michael Kaylor of Lapointe Rosenstein in Montreal and here's what he had to say: **"If there is a NAFTA Certificate of Origin on hand at the time of importation – use it! – even if the goods are duty free"**. In my opinion, no matter how you look at it, that's sound advice.

If you have questions, or require further information, please contact your respective Client Service Representative, Trade Compliance Services or John Brooks, Manager, Trade Compliance Services - Ayr Regional Centre - Email: john.brooks@farrow.com; Telephone: (519) 740 9335 ext.215.

John Brooks