



Global Affairs & Trade Compliance

Presented by:
Mark P. Neumann, Director of Customs /
Compliance for Mainfreight, Inc.
Licensed Customs Broker since 1991



Contents.

Agenda:

- **Trade Overview**

FTA

Imports

Exports

The Harmonized Tariff Schedule

Overseen by the World Customs Organization, the US switched to this global commodity/coding system in 1989. Used by over 200 countries/territories. It's organized into 21 sections subdivided into 96 chapters (ch.77 remains reserved for future use).

HS Sections and Chapters are arranged in order of a product's level of manufacture or in terms of its technological complexity. Natural commodities, such as live animals and vegetables, for example, are described in the early Sections of the HS, whereas more evolved goods such as machinery and precision instruments are described in later Sections. Chapters within the individual Sections are also usually organized in order of complexity or degree of manufacture.

The HS code consists of 6-digits. The first two digits designate the Chapter wherein headings and subheadings appear. The second two digits designate the position of the heading in the Chapter. The last two digits designate the position of the subheading in the heading.

The Harmonized Tariff Schedule – how are goods classified?

There are General Rules that are used to classify goods- and which must be applied in consecutive order.

GRI 1 - How to classify products at the 4-digit Heading level, based on the wording of the headings and the relative HS Section and Chapter Notes.

GRI 2 - How to classify both incomplete and unassembled goods, and mixtures and combinations of goods.

GRI 3 - How to classify products that are, prima facie, classifiable under two different HS headings.

GRI 4 How to classify products that cannot be classified according to GRI's 1, 2, and 3.

GRI 5 - How to classify packaging.

GRI 6 - How to classify products at the 6-digit subheading level, based on the wording of the subheadings and the relative HS Section and Chapter Notes.

Additionally, the US applies the following in the absence of special language or context requiring otherwise:

- (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;
- (b) a tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered;
- (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory; and
- (d) the principles of section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named.

FTA's and Preferential Duty Programs

The USA has FTA's with 23 countries: You may know about the USMCA – but we have agreements with other countries too!

Australia Bahrain Nepal Canada Japan Chile Colombia Israel Peru
Oman Dominican Republic El Salvador Guatemala Costa Rica Singapore
Honduras Nepal Jordan S. Korea Mexico Morocco Nicaragua Panama

Trade Preference Programs include:

- GSP (pending Congressional reauthorization)
- Automotive Products Trade Act
- Agreement on Trade in Civil Aircraft
- African Growth & Opportunity Act
- Agreement on Trade in Pharmaceutical Products
- Uruguay Round Concessions on Intermediate Chemicals for Dyes
- Least Developed Developing Countries
- CBERA – covering 17 Caribbean basin countries/territories
- Products of the Freely Associated States (Marshall Islands, Micronesia, Rep. of Pulau)

Free Trade Caveats

You can't just say the goods are eligible for free trade benefits.

*** Buying something in the USA doesn't confer duty-free benefits when you export it to a country we have a FTA/duty preference program with.**

*** Making something in the USA doesn't automatically confer duty-free benefits when you export it to a country we have a FTA/duty preference program with.**

For most, you have to effect a substantial transformation in the ingredients/parts used to make the whole to claim duty free benefits for most FTAs (the tariff shift test). Or to meet a "regional value content" or "Net Cost" showing that a substantial portion of the finished good was made in a beneficiary (participating) country to the FTA.

And you have to be able to provide proof it meets the FTA requirements – which vary from tariff number to tariff number.

Determining origin used to be easier.

Only the US-IL FTA has an easier means of determining origin:

The article is a new or different article grown, produced, or manufactured in Israel. And the sum of the cost or value of the materials produced in Israel, and including the cost or value of materials produced in the West Bank, the Gaza Strip or a qualifying industrial zone....

...the direct costs of processing operations performed in Israel, and including the direct costs of processing operations performed in the West Bank, the Gaza Strip or a qualifying industrial zone....is not less than 35 percent of the appraised value of each article at the time it is entered.

That seems simple enough. But NAFTA (now USMCA) changed it up in 1994.

The Origination Requirements

Duties. You can't make a free trade claim unless you know the goods qualify under the terms of the applicable free trade agreement.

Methods of determining an “originating good” include:

- The tariff-shift – very common approach! Do all components/additives in the lubricant product meet the applicable “tariff shift” requirement?

But special provisions apply for oil/lubricants in Chapter 27.

For example: Automotive gear oils are classified as: 2710.19.3040 with a nominal US tariff rate of 84 cents per bbl.

Notwithstanding the applicable product-specific rules of origin, a good of chapter 27 that is the product of a chemical reaction is an originating good if the chemical reaction occurred in the territory of one or more of the USMCA countries

USMCA Origination Requirements – a tariff shift rule:

A) A change to heading 2710 from any other heading, except from headings 2711 through 2715;

(B) Production of any good of heading 2710 as the result of atmospheric distillation, vacuum distillation, catalytic hydroprocessing, catalytic reforming, alkylation, catalytic cracking, thermal cracking, coking or isomerization; or

(C) Production of any good of heading 2710 as the result of direct blending, provided that:

(1) The nonoriginating material is classified in chapter 27,

(2) No component of that nonoriginating material is classified under heading 2207, and

(3) The nonoriginating material constitutes no more than 25 percent by volume of the good

It can be a challenge to keep up, as these requirements may vary somewhat from country to country, “FTA to FTA”!

NAFTA vs USMCA – what changed?

- Trade Regulations: USMCA updates provisions to address digital trade and e-commerce, which were not prominent in NAFTA.
- Auto Industry: The USMCA increases the regional content requirement for automobiles and mandates that a higher percentage of a vehicle's components be made by workers earning at least \$16 per hour.
- Labor Standards: USMCA strengthens labor provisions, aiming to improve working conditions in Mexico and enforce labor rights more effectively.
- Dairy and Agricultural Products: The agreement provides U.S. dairy farmers with greater access to the Canadian market while maintaining tariff protections for Canadian products.
- Intellectual Property: USMCA enhances protections for intellectual property rights, including longer copyright terms and protections for patents and trademarks.
- **New/Significant: Sunset Clause:** USMCA includes a 16-year sunset clause, with reviews every six years to assess the agreement's performance.
- Environmental Standards: The agreement includes more stringent environmental protections and commitments to combat illegal logging and wildlife trafficking.
- The responsibility for certifying a claim typically falls to the exporter or producer of the goods. They must provide a certification of origin that confirms the goods meet the agreement's requirements for preferential tariff treatment.

Tariff Engineering and Duty Deferrals

- a useful strategy that can be used to minimize duties on products by modifying them before they enter the commerce of a country.

Example: Maybe your company imports a product that is subject to a high tariff.

To reduce costs, you might be able to import the components separately rather than as a fully assembled product.

By doing this, you can take advantage of lower tariff rates on individual components compared to the assembled product.

Once the components are imported, the manufacturer can then assemble the product domestically – perhaps in a foreign trade zone - thus avoiding the higher tariffs that would have applied if the product had been imported as a whole. This allows the company to reduce overall import costs while still complying with trade regulations. **How that process could work:**

1. **Importing Components:** The manufacturer imports these components into an FTZ, where they can be stored and assembled without paying tariffs immediately.
2. **Assembly in the FTZ:** Inside the FTZ, the company assembles the imported components into finished products, such as smartphones or laptops.
3. **Paying Tariffs Only on Finished Goods:** When the completed products are shipped from the FTZ to the U.S. market, tariffs are paid only on the finished goods. If the tariff on the assembled product is lower than the total of the tariffs on individual components, this strategy reduces overall tariff costs.
4. **Re-exporting:** If the manufacturer later decides to export some of these finished products to other countries, they can do so without paying U.S. tariffs at all, further enhancing their cost savings.

Using an FTZ in this way allows businesses to optimize their supply chain, manage cash flow, and remain competitive despite high tariffs on finished goods.

Do you know your suppliers and customers?

Know your supplier and your end-user. Have you verified via on-site visits that they do not use/procure/ goods made w/slave labor? Or that they are good actors that can legally receive your products?

Use the Consolidated Screening List on www.export.gov for reference. Are your customers/suppliers debarred? Sanctioned, guilty of anti-boycott regs?

Are they using slave labor? The UFLPA is global in scope- not just pertaining to China and/or North Korea. How can you know?

Do you even take these issues into account? Why or why not?

Additional Export Screening Questions – are YOU doing this?

- Domestic delivery for export?
- Foreign destination/end use?
- Known end use/end user?
- Foreign distributor?
- Red flags, business practices?
- Lists to Check

Who is your end-user?

- **Direct Consumer?**
- **Reseller?**
- **Government entity?**
- **Other? (possible red flag- Census has stated that using “other” means you don’t know your end-user – discuss!)**

AES Compliance

You need internal procedures to ensure:

Accurate value for AES.

Who will determine this? You as USPPI? Or Mainfreight or other service providers?

Should you just provide a commercial invoice/SLI and have Mainfreight make any necessary adjustments? And what ARE those adjustments?

Do you have accurate Schedule B/HTS classifications?

Do you supply valid ECCN/license/license exception reporting information?

Do your freight forwarder have a POA (if Mainfreight is your AES filer)?

EXW sales – if you intend routed exports, get written confirmation from the FPPI that its agent will file the AES- then get a copy of the AES transmission details for auditing and recordkeeping.

How to Build an Internal Compliance Program

POLICY OF TOP MANAGEMENT – have them create a mission statement.

- **Develop written procedures with assigned responsibilities**
- Adopt a standard format similar to SLI for all export sales, whether direct or routed – complete it in full for all exports.
 - **Parts database** should be prepared with Sch B/HTS and ECCN numbers. EAR99 if not subject to the EAR – give it to your forwarder (Mainfreight, Inc., natch!!)
 - Audit & Verification – are you auditing/reviewing every import/export move?
 - **Terms of sale and the “routed” indicator are key per order**
 - Export value needed if terms are not FOB/FCA named port
 - **License information or license exception codes** as may be applicable
 - **Create an import/export checklist and have a documented compliance program**
 - **Prior Disclosures – both imports and exports- why should you care?**
 - Exception reporting – who do you notify if actual information should change from what was filed? Part number? Sch B/HTS? ECCN? End-User? Ult cnee? Routed vs non?

Q & A –

- What questions do you have?
- Contact Mark Neumann, Director of Customs / Compliance
- Mark.Neumann@mainfreight.com
+1 847 584 4764

