

2016 Americas Forum ABA Section of International Law

**Mandarin Oriental Miami
March 1, 2016**

CAFTA v. NAFTA or the TPP? Which is the better deal?



Peter Quinter, Attorney

Customs & International Trade Law Group

GrayRobinson, P.A.

Mobile (954) 270-1864

Office (305) 416-6960

Peter.Quinter@Gray-Robinson.com

Skype: Peter.Quinter1

Do you have questions about importing/exporting?

<http://www.GRCustomslaw.com>

**GrayRobinson
Customs & International Trade Law Blog**

Home About Us Sobre Nosotros

TUESDAY, JUNE 12, 2012

SUBSCRIBE VIA EMAIL

Enter your email address to keep up to date with the latest Customs and International Trade News:

Subscribe

SEARCH THIS BLOG

Search

PETER QUINTER'S LINKEDIN

my LinkedIn profile

MELISSA GROISMAN'S LINKEDIN

my LinkedIn profile

New CBP Regulation for Suspected Counterfeit Merchandise

Finally, after years of debate, on April 24, 2012, CBP amended its regulations regarding the detention and seizure of suspected imported counterfeit merchandise. In my opinion, it provides a good balance between the rights of legitimate importers, and the need for CBP to examine, detain, and seize merchandise that violates the trademark rights of companies that have registered their trademarks with the U.S. Patent and Trademark Office and then recorded those trademarks with CBP. The interim rule is entitled "Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border," and amends 19 CFR Parts 133 and 151.

Peter Quinter

In summary, here are the important changes:

1. Merchandise may be detained by CBP for up to 30 days from the date the merchandise is presented for examination to CBP.
2. The U.S. importer will receive written notification from CBP within 5 days of the detention of the merchandise by CBP.
3. The U.S. importer then has 7 days to establish to CBP's satisfaction that the detained merchandise is not counterfeit.
4. CBP may provide to the trademark owner, at any time, written notice of the date

Priority Trade Issues

- [Antidumping and Countervailing Duties](#)
- [Import Safety](#)
- [Intellectual Property Rights](#)
- [Textiles](#)
- [Trade Agreements](#)

The United States has free trade agreements in force with 20 countries. These are:

- [Australia](#)
- [Bahrain](#)
- [Canada](#)
- [Chile](#)
- [Colombia](#)
- [Costa Rica](#)
- [Dominican Republic](#)
- [El Salvador](#)
- [Guatemala](#)
- [Honduras](#)
- [Israel](#)
- [Jordan](#)
- [Korea](#)
- [Mexico](#)
- [Morocco](#)
- [Nicaragua](#)
- [Oman](#)
- [Panama](#)
- [Peru](#)
- [Singapore](#)

The United States has completed negotiations of a regional, Asia-Pacific trade agreement, known as the [Trans-Pacific Partnership \(TPP\) Agreement](#) and is in negotiations of the [Transatlantic Trade and Investment Partnership \(T-TIP\)](#) with the European Union, with the objective of shaping a high-standard, broad-based regional pact.

CBP Entry Summary Form

Form Approved OMB No. 1651-0022
EXP. 08-31-2014

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

ENTRY SUMMARY

8. Importing Carrier		9. Mode of Transport		10. Country of Origin		11. Import Date									
12. B/L or AWB No.		13. Manufacturer ID		14. Exporting Country		15. Export Date									
16. I.T. No.		17. I.T. Date		18. Missing Docs		19. Foreign Port of Lading		20. U.S. Port of Unlading							
21. Location of Goods/G.O. No.		22. Consignee No.		23. Importer No.		24. Reference No.									
25. Ultimate Consignee Name and Address				26. Importer of Record Name and Address											
City		State		Zip		City		State		Zip					
27. Line No.		28. Description of Merchandise				32. A. Entered Value B. CHGS C. Relationship		33. A. HTSUS Rate B. ADA/CVD Rate C. IRC Rate D. Visa No.		34. Duty and I.R. Tax Dollars Cents					
		29. A. HTSUS No. B. ADA/CVD No.		30. A. Grossweight B. Manifest Qty.		31. Net Quantity in HTSUS Units									
Other Fee Summary for Block 39		35. Total Entered Value		CBP USE ONLY				TOTALS							
		\$		A. LIQ CODE		B. Ascertained Duty		37. Duty							
		Total Other Fees		REASON CODE		C. Ascertained Tax		38. Tax							
		\$				D. Ascertained Other		39. Other							
						E. Ascertained Total		40. Total							
36. DECLARATION OF IMPORTER OF RECORD (OWNER OR PURCHASER) OR AUTHORIZED AGENT															
I declare that I am the <input type="checkbox"/> Importer of record and that the actual owner, purchaser, or consignee for CBP purposes is as shown above, OR <input type="checkbox"/> owner or purchaser or agent thereof. I further declare that the merchandise <input type="checkbox"/> was obtained pursuant to a purchase or agreement to purchase and that the prices set forth in the invoices are true, OR <input type="checkbox"/> was not obtained pursuant to a purchase or agreement to purchase and the statements in the invoices as to value or price are true to the best of my knowledge and belief. I also declare that the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed. I will immediately furnish to the appropriate CBP officer any information showing a different statement of facts.															
41. DECLARANT NAME				TITLE				SIGNATURE				DATE			
42. Broker/Filer Information (Name, address, phone number)								43. Broker/Importer File No.							
Paperwork Reduction Act Notice: CBP Form 7501 (06/09)															

North American Free Trade Agreement (NAFTA)



- United States
- Mexico
- Canada

NAFTA: Recordkeeping

19 C.F.R. § 181.21(a). Filing of claim for preferential tariff treatment upon importation.

. . . [D]eclaration must be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

Claims Made at the Time of Filing the Entry Summary

A claim for preferential tariff treatment for a good under the NAFTA is made by using the Special Program Indicator (SPI) "CA" for products of Canada or "MX" for products of Mexico as a prefix to the HTSUS number under which the good is classified. This claim is made at the time of filing of the entry summary. The Certificate of Origin must be in the possession of the importer at the time preferential tariff treatment for an originating good is claimed.

NAFTA Certificate of Origin

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

OMB No. 1551-0098
Exp. 10-31-2016

**NORTH AMERICAN FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN**
19 CFR 181.11, 181.22

1. EXPORTER NAME, ADDRESS AND EMAIL TAX IDENTIFICATION NUMBER: 3. PRODUCER NAME, ADDRESS AND EMAIL TAX IDENTIFICATION NUMBER:	2. BLANKET PERIOD FROM (mm/dd/yyyy) TO (mm/dd/yyyy) 4. IMPORTER NAME, ADDRESS AND EMAIL TAX IDENTIFICATION NUMBER:
--	--

5. DESCRIPTION OF GOOD(S)	6. HS TARIFF CLASSIFICATION NUMBER	7. PREFERENCE CRITERION	8. PRODUCER	9. NET COST	10. COUNTRY OF ORIGIN

I CERTIFY THAT:

- THE INFORMATION ON THIS DOCUMENT IS TRUE AND ACCURATE AND I ASSUME THE RESPONSIBILITY FOR PROVING SUCH REPRESENTATIONS. I UNDERSTAND THAT I AM LIABLE FOR ANY FALSE STATEMENTS OR MATERIAL OMISSIONS MADE ON OR IN CONNECTION WITH THIS DOCUMENT;
- I AGREE TO MAINTAIN AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM, IN WRITING, ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE;
- THE GOODS ORIGINATED IN THE TERRITORY OF ONE OR MORE OF THE PARTIES, AND COMPLY WITH THE ORIGIN REQUIREMENTS SPECIFIED FOR THOSE GOODS IN THE NORTH AMERICAN FREE TRADE AGREEMENT AND UNLESS SPECIFICALLY EXEMPTED IN ARTICLE 411 OR ANNEX 401, THERE HAS BEEN NO FURTHER PRODUCTION OR ANY OTHER OPERATION OUTSIDE THE TERRITORIES OF THE PARTIES; AND
- THIS CERTIFICATE CONSISTS OF PAGES, INCLUDING ALL ATTACHMENTS.

11a. AUTHORIZED SIGNATURE	11b. COMPANY
11c. NAME	11d. TITLE
11e. DATE (mm/dd/yyyy)	11f. TELEPHONE NUMBERS <small>(Voice) (Facsimile)</small>
11g. EMAIL	

CBP Form 434 (11/14)

Foreign Customer Being Reviewed for FTA Compliance? – What to Do.

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

0198 No. 1651-0098
Exp. 08-31-2014
See back of form for Paperwork Reduction Act notice.

NAFTA VERIFICATION OF ORIGIN QUESTIONNAIRE
19 CFR 181.72

This questionnaire is sent to you pursuant to 19 CFR 181.72. The questionnaire will be used in determining if the _____ described on the NAFTA Certificate of Origin (CO) dated _____ and signed by _____ originates under the NAFTA. If necessary, additional information may be requested at a later date.

<input type="checkbox"/> EXPORTER If this box is checked, you are being sent this questionnaire as the exporter of the imported good. If you relied upon a Certificate of Origin or written representation from the Producer to prepare your Certificate of Origin, provide a copy of what it was that you relied upon, and then go directly to Section V and complete it. If you relied upon your knowledge of the good, complete the questionnaire.	<input type="checkbox"/> PRODUCER OF GOOD If this box is checked, you are being sent this questionnaire as the producer of the imported good. The good was exported by _____ Complete the questionnaire.
<input type="checkbox"/> EXPORTER/PRODUCER If this box is checked, you are being sent this questionnaire as the exporter and also the producer of the imported good. Complete the questionnaire.	<input type="checkbox"/> PRODUCER OF MATERIAL If this box is checked, you are being sent this questionnaire because _____ identified you as the producer of the material(s) used in the production of the good described above. Complete the questionnaire.

You have until _____ to return the completed and signed questionnaire to the requesting CBP office. You may fax your response. If a reply cannot be made by this date, please contact the CBP office by mail, telephone, or fax. If additional space is needed for your response, attach additional pages as needed. When the verification is completed, the exporter/producer will receive a written determination of the findings. The producer of a verified material will also be notified of the results of the verification of the material. The confidential business information collected on the questionnaire may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters. The questionnaire must be signed and dated by an individual who can certify as to the accuracy of the information provided in the questionnaire. Failure to complete and return this questionnaire may result in the denial of preferential treatment under the NAFTA.

SECTION I ▶ **PRODUCTION PROCESS**
Provide a brief description of the production process for the good/material being verified.

SECTION II ▶ **NON-ORIGINATING/UNKNOWN MATERIALS OR COMPONENTS**
Provide the following information for each non-originating material or component and for each material or component whose origin is unknown, used to produce the good being verified. If none were used, state "NONE".

Description of the material or component	HS#

HS#— Provide the six digit Harmonized System number or if the rule of origin of the good requires eight digits, supply eight.

CBP Form 446 (04/97)

- NAFTA Verification of Origin Questionnaire
- CBP can send this form to:
 - Exporter
 - Producer of Good
 - Exporter/Producer
 - Producer of Materials

Claim for Preferential Tariff Treatment Under DR-CAFTA



The importer may make a claim for preferential tariff treatment based on either a written or electronic certification by the importer, exporter, or producer.

Generally, under the CAFTA-DR, a non-textile good is originating where:

- a) The good is wholly obtained or produced entirely in the territory of one or more of the Parties (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic and/or the U.S.);
- b) The good is produced entirely in the territory of one or more of the Parties and
 - (i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in GN29(n);
or
 - (ii) The good otherwise satisfies any applicable regional value content (RVC) specified in GN29(n); and the good satisfies all other applicable requirements; or
- c) The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

What is the TPP?

The **Trans-Pacific Partnership (TPP)** writes the rules for global trade—rules that will help increase Made-in-America exports, grow the American economy, support well-paying American jobs, and strengthen the American middle class.

Australia	Peru
Canada	United States
Japan	Vietnam
Malaysia	Chile
Mexico	Brunei
New Zealand	Singapore

Upgrading NAFTA

- **Upgrading the North American Free Trade Agreement (NAFTA)**
- As President Obama has made clear, past trade deals – including the North American Free Trade Agreement, or NAFTA – haven't always lived up to the hype. That's why he has called for renegotiating NAFTA to better address labor and environmental issues. Because TPP includes Canada and Mexico and improves substantially on NAFTA's shortcomings, it delivers on that promise. TPP learns from past trade agreements, including NAFTA, by upgrading existing standards and setting new high standards that reflect today's economic realities.
- **HOW TPP UPGRADES NAFTA**
- Adopting the **highest environmental standards of any trade agreement**, including fully enforceable obligations prohibiting some of the most harmful fishery subsidies, creating new tools to combat illegal wildlife trafficking, and improving enforcement of conservation laws.
- Adopting the **highest labor standards of any trade agreement**, including fully-enforceable requirements to protect the freedom to form unions and bargain collectively, prohibitions against exploitative child labor and forced labor, protections against employment discrimination and requirements for acceptable conditions of work.
- Including the **first-ever measures to ensure that state-owned enterprises compete on a commercial basis**, and that the advantages SOEs receive from their governments (such as unfair subsidies) do not have an adverse impact on American workers and businesses.
- Setting standards to **protect digital freedom**, by preserving the free flow of information across borders, and protecting against requirements that force businesses to locate infrastructure in the markets in which they seek to operate.
- Subjecting commitments in the Labor and Environment chapters to **dispute settlement**—the same enforceability mechanism available for other chapters of the TPP Agreement – including the availability of trade sanctions.

2016 Americas Forum ABA Section of International Law

**Mandarin Oriental Miami
March 1, 2016**