

What To Do When USCBP Wants To Conduct a NAFTA Verification Of An Exporter/Producer in Canada

May 23, 2016

Most Canadian businesses do not relish a visit from a Canadian tax auditor and also do not view with anticipation a fax from the United States Customs and Border Protection (USCBP) asking to come for a visit to conduct a NAFTA verification of their certificates of origin.

NAFTA Article 506 sets out the authority for each Party to NAFTA (Canada, Mexico and the United States) to conduct verifications of the books and records of exporters and/or producers located in the territory of another Party. NAFTA Article 506 permits USCBP to conduct verifications on Canadian soil and in Canadian factories/exporters.

The overall objective of an NAFTA verification is to confirm that products covered by a certificate of origin completed by the exporter or producer qualify as originating in accordance with the rules of origin in NAFTA (found in Chapter 4).

Usually the NAFTA verification process starts with a fax from USCBP. They get the information from the certificate of origin that was provided by a U.S.-based importer when they claimed NAFTA duty-free treatment for imported goods from Canada. The fax/letter usually indicates that the USCBP would like to visit. USCBP usually provides a planned date for the NAFTA verification. The fax/letter also indicates for which goods they plan to verify origin. It can be just a single good that is sold or it could cover a broad range of goods. The fax/letter also indicates that if the Canadian producer refuses to allow USCBP to visit to conduct the verification, shipments to the United States will be denied NAFTA preferential treatment.

What should the Canadian producers/exporter do when they get such a letter?

1. Do not panic – this is normal and USCBP is making sure that the certificates of origin are valid and non-NAFTA goods are not being transshipped via Canada.
2. Call the USCBP officers to let them know that you are consenting to their visit. If you need to change the date, please let them know why the date of the visit needs to be changed.
3. Ask the USCBP officers what documents they would like you to organize for them to review – having all documents organized will make the visit run more smoothly and may shorten the time to must entertain the USCBP officers. Often USCBP will select a sample of export transactions.
4. Contact a Canadian lawyer to assist you organize the documents and to act as an observer during the visit.

5. Conduct a review of your records as soon as possible to identify any problems before the USCBP officers arrive. If you have not undertaken a origin review, this is the time to do it. You will need to create a bill of materials for each input in the final good and assess whether the rules of origin are satisfied. You will need to classify each input according to the HS harmonized code. You will need to look up the corresponding NAFTA rule of origin. You may need to apply a transformation test (regional value content or tariff classification or both). You may need to contact suppliers of inputs and gather information about the origin of the inputs.
6. Clean up your premises. Is there anything you do not wish to discuss with the USCBP officers?
7. Trace the steps of the inputs to the end of the production process to make sure you can discuss how you keep track of the originating status of the goods.
8. Before the USCBP officers arrive, organize the documents they requested.
9. When the USCBP officers arrive, take them on a tour of your business.
10. If you have identified any problems, raise them with USCBP before they find them on their own.
11. While you do not have to baby-sit the USCBP officers, do not leave them to their own devices. They are visitors and are conducting a review. You should watch them too.
12. Pick one or two people in the organization to be the point people. Others should not answer questions without verifying their answers with a point person.
13. Do not try to fake it. Do not answer questions without verifying the answer is accurate. If you need to review records, review the records and then give the answer.
14. At the end of each day, ask for the USCBP to provide their questions for you to work on overnight.
15. Make copies of every document that you provide to USCBP. I like to identify each document with a VE (Verification Exhibit number). I like to make a list of all verification exhibits. I also like to scan all verification exhibits and save the verification documents on a CD-ROM or in a folder.
16. If you must follow-up after the verification is over, make a list of all documents or follow-up items and review the list with the USCBP officers. It is important to meet their expectations.
17. If you have a disagreement with the USCBP officers about whether the goods qualify as originating, it is very important to make your views known and take steps to pursue your legal rights. The ramifications of USCBP deciding goods are non-originating can be severe from a customer relations perspective. Get help before the verification moves into denial of NAFTA treatment.

If USCBP determines that the exported goods are not NAFTA-originating, the U.S. importers will be assessed customs duty at the applicable rate. We will address damage control after a NAFTA verification in a subsequent post.

Each NAFTA verification will have fact specific issues to address. Please contact Cyndee Todgham Cherniak at 416-307-4168.



Cyndee Todgham Cherniak
cyndee@lexsage.com
Mobile: (416) 389-8999

The Gooderham “Flatiron” Building
49 Wellington Street East, Suite 501
Toronto, Ontario M5E 1C9

Phone: 416-307-4168/416-760-8999
Main Office: 647-290-4249
Fax: 416-760-899

www.lexsage.com

*LexSage Professional Corporation is approved by the [Law Society of Upper Canada](#)