



Ottawa, April 15, 2014

Memorandum D11-3-2

Marking Determination/Re-determination of Goods Imported From a NAFTA Country

In Brief

1. This revised memorandum provides a link to the [*Regulations for Determining the Country of Origin of Goods Imported from a NAFTA Country for the Purpose of Specifying that Certain Goods be Marked*](#). Legislative and regulatory references are no longer partially or fully excerpted in this memorandum.
2. The editing revisions made in this memorandum do not affect or change any of the existing policies or procedures.

This memorandum outlines and explains the legislation and regulations governing the marking determination and re-determination of goods imported from a North American Free Trade Agreement (NAFTA) country, and advises importers/owners, exporters and producers on how to use appropriate sections of the legislation.

Legislation

[Customs Act](#)

Regulations:

[Regulations for Determining the Country of Origin of Goods Imported from a NAFTA Country for the Purpose of Specifying that Certain Goods be Marked](#)

Schedule I – (Subsection 3(1));

Schedule II – (Subsection 3(2) and (3)); and

Schedule III – Tariff Shift Rules

[Marking of Imported Goods Regulations](#)

Short Title

These Regulations may be cited as the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*.

Guidelines and General Information

Definitions

1. The following definitions are for the purpose of this memorandum:

“[Canada Customs Coding Form B3-3](#)“ a document used to account for imported goods, will also include other accounting documents; (*Douanes Canada – Formule de codage B3-3*)

“commingled” means physically combined or mixed in inventory; (*combiné*)

- “date of accounting,” in respect to subsections 32(1), (3), and (5) of the [Customs Act](#) (the Act), is: For shipments paid at non-terminal locations or for recovery mode accounting documents, show the “Date Stamp” date that appears on the receipt copy of [Form B3-3, Canada Customs Coding Form](#); (*date de la déclaration en détail*)
- “designated officer” includes the marking expert in the regions and officers at Headquarters; (*agent désigné*)
- “domestic material” means a material, the country of origin of which, as determined under these Regulations, is the same country in which the goods are produced; (*matière d’origine nationale*)
- “exporter” means a person exporting goods to Canada who may not be the producer of the goods; (*exportateur*)
- “foreign material” means a material, the country of origin of which, as determined under these Regulations, is not the same country in which the goods are produced; (*matière étrangère*)
- “fungible goods” means goods that are interchangeable for commercial purposes with other goods the properties of which are identical; (*marchandises fongibles*)
- “fungible materials” means materials that are interchangeable for commercial purposes with other materials the properties of which are identical; (*matières fongibles*)
- “importer” includes any person who accounts for imported goods; (*importateur*)
- “legible” means capable of being easily read; (*lisible*)
- “producer” means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles a good; (*producteur*)
- “production” means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling goods; (*production*)
- “ultimate purchaser” means the last person in Canada who purchases the goods in the form in which they are imported, whether or not that purchaser is the last person to use the goods in Canada. (*dernier acheteur*)
- “used in the production” means physically incorporated into goods as a result of production; (*utilisé dans la production*)

Determination by a Designated Officer

2. Pursuant to subsection 57.01(1) of [the Act](#), a designated officer may determine the marking of imported goods from a NAFTA country at any time before or within 30 calendar days after a final accounting is made under subsection 32(1), (3), or (5) of the Act.
3. Determinations will include all three marking components:
 - (a) Component 1: Is the good required to be marked with its country of origin?
 - (b) Component 2: What country of origin must be marked on the goods?
 - (c) Component 3: What are the acceptable method and manner of marking the goods?
4. A determination rendered under subsection 57.01(1) of [the Act](#) will be issued in the form of a letter.
5. When a determination of marking cannot be made due to lack of information, the designated officer will advise the importer or his agent that the imported goods are under review and that further information is required before a final decision can be given. If the additional information is not received within the 30 calendar day statutory time limit of subsection 57.01(1) of [the Act](#), a re-determination may be made by the designated officer pursuant to paragraph 61(1)(b) of the Act, based on the information available.
6. Notice of the determination shall be given to the importer, exporter, and producer of the goods.

Deemed Determination

7. Subsection 57.01(2) of [the Act](#) provides that in those cases where a marking determination of imported goods from a NAFTA country is not made within 30 calendar days after the time the goods are accounted for under subsection 32(1), (3), or (5) of the Act, then a determination shall be deemed to have been made at the end of the 30 calendar day period.

Re-determination Without Request – Section 61

8. Pursuant to paragraph 61(1)(b) of [the Act](#), a designated officer may, within 90 days after a determination under section 57.01 of the Act :

- (a) re-determine a determination made under section 57.01 of the Act; or
- (b) complete a review initiated under section 57.01 of the Act, where information was not received within the 30-day limits.

9. Re-determinations will include all three marking components:

- (a) Component 1: Is the good required to be marked with its country of origin?
- (b) Component 2: What country of origin must be marked on the goods?
- (c) Component 3: What are the acceptable method and manner of marking the goods?

10. Pursuant to subparagraph 61(1)(b)(i) of [the Act](#), a designated officer may make a re-determination of a marking determination rendered under section 57.01 of the Act within four years, where the Canada Border Services Agency (CBSA) deems it advisable.

Documentation Required to Support a [Form B236](#)

11. Requests for re-determination must include documentation for all three marking components as further detailed in paragraphs 12 and 13 below.

12. Is the good required to be marked with its country of origin? What are the acceptable method and manner of marking the goods? To address these questions, the following information should be provided:

- (a) descriptive illustrations, literature, samples, drawings, or catalogues relating to the goods that are the subject of the request;
- (b) nature and/or condition of the goods when a factor.

13. What country of origin must be marked on the goods? To address this question, the mandatory information outlined in the Appendix should be provided.

14. Documents that are presented in support of a request must be easily linked to the goods and the transaction numbers to which they relate.

Presentation of Requests

15. [Form B236](#), must be sent to the appropriate regional CBSA office or to any CBSA office in the region where the goods were released or accounted for.

16. When a time limit referred to in this memorandum (e.g., for a determination/re-determination, or request for re-determination), falls on a holiday, Saturday or Sunday, the final day for carrying out the activity shall be the next working day.

17. Any inquiries respecting the status of a request should be made to the appropriate [CBSA Regional offices](#) where the request was presented. Also, the requester should provide the filing date of [Form B236](#) as well as the original transaction number, date, and the Technical Reference System (TRS) number of the appeal under review, if applicable.

Notice of the CBSA's Decision – Determinations and Re-determinations

18. A detailed notice will be prepared by the CBSA to convey the results of a determination/re-determination under subsection 57.01 (1) or paragraph 61(1)(b) of [the Act](#);

19. The notice of the CBSA's decision as described in paragraph 18 shall be provided to the importer/owner, exporter, or producer. In situations where a customs broker or person acting on behalf of the importer has prepared the [B3-3](#) accounting document, the CBSA will notify that person.

General Principles

20. When CBSA advice, which clearly relates to the goods in question, was issued to the importer but was not followed, re-determinations will be made on importations cleared on and after the date that the advice was given, provided that such re-determinations made under subparagraph 61(1)(b)(i) of [the Act](#) can be made within four years of the date of a determination made under section 57.01 of the Act. Such advice includes information contained in the CBSA published directives, policy papers and rulings issued to the importer/owner, exporter, or producer of the imported goods.

21. Re-determinations will be limited to those that can be made within 90 days of the date of a determination made under section 57.01 of [the Act](#).

22. If the CBSA has insufficient information about the goods to permit re-determination, the importer will, whenever possible, be advised in writing within 90 days of the date of a determination made under section 57.01 of [the Act](#) that additional information is required and that a re-determination will be made as soon as possible. In all cases, re-determinations made under subparagraph 61(1)(b)(i) of the Act will be made within four years of the date of a determination made under section 57.01 of the Act.

Additional Information

23. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time/except holidays). TTY is also available within Canada: **1-866-335-3237**.

Appendix

Supporting Documentation Requirements for a Re-determination Request for Marking

1. The Canada Border Services Agency (CBSA) will consider a re-determination request for marking in accordance with section 60 of the [Customs Act](#) (the Act) as to whether the proposed or actual marking of goods satisfies the country of origin marking requirements under Article 311 (Country of Origin Marking) of the [North American Free Trade Agreement](#) (NAFTA).
2. Re-determinations for marking may contain three main components:
 - (a) Component 1: Is the good required to be marked with its country of origin?
 - (b) Component 2: What country of origin must be marked on the goods?
 - (c) Component 3: What are the acceptable method and manner of marking the goods?
3. In addition, there are two types of supporting documentation:
 - (a) mandatory information which must be submitted with [Form B236](#); and
 - (b) additional information which should be submitted with Form B236 if the applicant can determine whether any of the criteria are applicable. It should be noted that the CBSA may request such information if required, at a later date.

Mandatory Information

4. [Form B236](#) must contain the following information:
 - (a) any good that is listed in Schedule I of [Memorandum D11-3-1, Marking of Imported Goods](#), as a good that is required to be marked;
 - (b) if the appellant is of the opinion that the goods may not require marking as a result of the exemptions contained in Memorandum D11-3-1, the specific exemption must be identified and a detailed explanation outlining the rationale for this position should be provided;
 - (c) if applicable, copies of the pre-authorization or authorization to mark goods in Canada. Original transaction numbers (on [Form B3-3](#)) should also be provided;
 - (d) a description of the end-use of each good;
 - (e) the Harmonized System tariff classification number for each of the goods which were imported into Canada and are the subject of the request. If a ruling regarding the tariff classification of the goods is available, a copy should be provided;
 - (f) for each good, producer's literature, drawings, photographs, or other descriptive literature, in order to support the good's Harmonized System tariff classification number;
 - (g) for each good, a general description of the manufacturing process performed, in the order performed and the location (country) where each process occurred;
 - (h) a detailed list of all the materials used in the production of each good obtained from the producer which includes:
 - (i) whether the materials were imported from other NAFTA and/or non-NAFTA countries,
 - (ii) the names and addresses (and telephone numbers – optional) of all NAFTA suppliers of materials, and,
 - (iii) for each material, provide producer's literature, drawings, photographs, or other descriptive literature, in order to classify the material;
 - (i) which paragraph under sections 4 through 8 of the [Determination of Country of Origin for the Purposes of Marking Goods \(NAFTA Countries\) Regulations](#) is applicable to the goods (as indicated on the determination being appealed and which is applicable if under dispute);

- (j) the size of the country of origin marking contained on the goods in measurement of inches or millimeters;
- (k) a specific description as to where the country of origin marking is located on the good;
- (l) the method of marking being used (e.g., stamping, etching, engraving);
- (m) the specific details regarding the legibility of the marking used (e.g., colour of marking and background);
- (n) if applicable, where abbreviations are used to represent the country of origin, provide the name of the country of origin in whole;
- (o) the exact wording of the country of origin marking in the language it appears on the good;
- (p) whether there are any methods of marking that would not be suitable due to the nature of the goods;
- (q) how the goods will be packaged and provide a specific description of any marking described thereon;
- (r) a specific description of the container to be used for shipping purposes and provide a specific description of any marking described thereon;
- (s) if known at the time of importation, the name and address of the ultimate purchaser (refer to paragraph 1 of the Guidelines and General Information for the definition of “ultimate purchaser”) and briefly explain what happens to the goods after importation. If the name of the ultimate purchaser is not known at the time of importation, describe how the goods are sold or distributed after importation;
- (t) if the words “Canada” or “Canadian” or any abbreviations thereof, or the name of any country or place other than the name of the country of origin of the goods appears on the goods:
 - (i) indicate the wording used,
 - (ii) indicate the locations of all such wording on the goods, and,
 - (iii) indicate the locations of the wording in relation to the country of origin marking on the goods; and,
- (u) if the goods are iron or steel pipes or tubes:
 - (i) the inside diameter measurement in inches or millimeters of the pipes or tubes,
 - (ii) the method of packaging and/or bundling that is used, and,
 - (iii) where the goods described have a critical surface finish, provide a description of the finish.

5. Applicants should refer to the [Marking of Imported Goods Regulations](#) to obtain additional information regarding the marking of iron or steel pipes and tubes.

6. If the appellant has determined or can determine whether any of the following criteria are applicable, the information indicated below should be submitted with [Form B236](#) to the CBSA.

7. If possible, provide a properly identified sample of each good.

Goods Wholly Obtained or Produced in a Single NAFTA Country – Paragraph 4(1)(a) or Subsection 4(2) of the [Determination of Country of Origin for the Purposes of Marking Goods \(NAFTA Countries\) Regulations](#) (the Regulations)

8. If the goods do not contain materials from outside a single NAFTA country, i.e., they are completely manufactured in Canada, Mexico, or the United States (U.S.) from materials which are completely produced in the same NAFTA country, the appellant should provide an explanation as to how the goods qualify under paragraph 4(1)(a) or subsection 4(2) of [the Regulations](#) based on information obtained from the producer of the goods.

Goods Produced Exclusively from Domestic Materials in a Single NAFTA Country – Paragraph 4(1)(b) of [the Regulations](#)

9. If the goods were produced exclusively from domestic components or materials in a single NAFTA country and each of the components or materials qualify as either wholly obtained or produced, or meet a tariff

classification change under the Tariff Shift Rules (refer to Schedule III under [the Regulations](#)), the appellant should submit the following information obtained from the producers:

Note: For the purposes of this section, “domestic components or materials” shall be considered as a “good.”

- (a) a list of all materials used in the production of the good;
- (b) the names and addresses (and telephone numbers – optional) of the suppliers of those materials;
- (c) a general description of the manufacturing process performed, in the order performed and the location (country) where each process occurred;
- (d) a list of the materials used in the production of the good which in the producer's opinion qualify as “wholly obtained or produced,” under the Regulations, paragraph 4(1)(a) or any of the paragraphs of subsection 4(2) of the Regulations, e.g.: (a) a mineral good extracted in the territory of a country;
- (e) a list of the materials used in the production of the good which in the producer’s opinion, qualify as originating when meeting any of the Tariff Shift Rules under the Regulations (Schedule III contained in the Regulations) applicable to such materials. The following additional information will be required:
 - (i) the tariff classification applicable to each good qualifying under Schedule III of the Regulations,
 - (ii) a description of all materials used in the production of each good which qualify under Schedule III of the Regulations which also indicates whether the materials used in the production of the good were imported from other NAFTA and/or non-NAFTA countries,
 - (iii) supplier confirmation letters to prove the origin of any materials used in the production of the good, that if non-originating, would not satisfy a requirement of the Schedule III of the Regulations, and
 - (iv) an explanation as to how each good qualifies under either:
 - (1) paragraph 4(1)(b), or
 - (2) paragraph 4(1)(c) of the Regulations;
- (f) when components or materials used in the production of the good fail to meet the Tariff Shift Rules Schedule III under the Regulations and it is determined that de minimis (section 11 of the Regulations) could be utilized, indicate the subsection applicable under the de minimis provision. In addition, provide the values and/or weight information as indicated therein along with a copy of a commercial invoice;
- (g) when components or materials used in the production of the good are determined to be fungible materials, in accordance with the General provision (subsection 5(2) of the Regulations), indicate the specific paragraph applicable;
- (h) when the good is determined to be a fungible good, in accordance with the Fungible Goods provisions (section 10 of the Regulations), indicate the specific subsection or paragraph under section 10 applicable thereto and provide an explanation why that subsection or paragraph is applicable to the good; and
- (i) provide an explanation as to why the good qualifies for the Tariff Preference Override provision (section 8 of the Regulations). The completed and signed Certificate of Origin should accompany the explanation given.

Goods Satisfying a Tariff Classification Change Marking Rule in a Single NAFTA Country – Paragraph 4(1)(c) of [the Regulations](#)

10. If the goods were produced from materials sourced in more than one NAFTA country, and/or any non-NAFTA country, the appellant should determine the tariff classification of the goods and determine the Tariff Shift Rule (Schedule III under [the Regulations](#)) applicable to the goods of that tariff classification. In this case, the appellant may be requested to submit the following information obtained from the producer:

- (a) an explanation as to why the good qualifies pursuant to the Tariff Shift requirements (Schedule III of the Regulations);

- (b) supplier confirmation letters to prove the origin of any materials from other NAFTA and/or non-NAFTA countries that would cause the goods to fail the Tariff Shift Rule requirements (Schedule III of the Regulations);
- (c) when components or materials used in the production of the good fail to meet the Tariff Shift Rules (Schedule III of the Regulations) and it is determined that de minimis (section 11 of the Regulations) could be utilized, indicate the specific subsection and/or paragraph applicable under section 11 and provide the values and/or weight information as indicated therein along with a copy of a commercial invoice;
- (d) when a component or material used in the production of the good is determined to be a fungible material, indicate the specific paragraph under subsection 5(2) of the Regulations applicable thereto and provide an explanation why that paragraph is applicable to the component or material;
- (e) when the good is determined to be a fungible good, indicate the specific subsection or paragraph under section 10 of the Regulations applicable thereto and provide an explanation why that subsection or paragraph is applicable to the good; and
- (f) provide an explanation as to why the good qualifies for the Tariff Preference Override provision (section 8 of the Regulations). The completed and signed Certificate of Origin should accompany the explanation given.

All Other Goods – Qualifying Under Sections 5 Through 7 of [the Regulations](#)

11. For all other goods qualifying under sections 5 through 7 of [the Regulations](#), the appellant should:
- (a) indicate the subsection or paragraph of the Regulations applicable and provide an explanation why that subsection or paragraph is applicable to the good;
 - (b) when it is determined that de minimis could be utilized, indicate the specific subsection or paragraph under section 11 of the Regulations applicable and provide the values and/or weight information as indicated therein along with a copy of a commercial invoice;
 - (c) when a component or material used in the production of the good is determined to be a fungible material in accordance with the General provisions (subsection 5(2) of the Regulations), indicate the specific paragraph under subsection 5(2) applicable thereto and provide an explanation why that paragraph is applicable to the component or material;
 - (d) when the good is determined to be fungible, in accordance with the Fungible Goods provisions (section 10 of the Regulations), indicate the specific subsection or paragraph under section 10 applicable thereto and provide an explanation why that subsection or paragraph is applicable to the good; and
 - (e) provide an explanation as to why the good qualifies for the Tariff Preference Override provision (section 8 of the Regulations). The completed and signed Certificate of Origin should accompany the explanation given.

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	
Legislative References	<u>Customs Act</u> <u>Regulations for Determining the Country of Origin of Goods Imported from a NAFTA Country for the Purpose of Specifying that Certain Goods be Marked</u> <u>Marking of Imported Goods Regulations</u>
Other References	<u>D11-3-1</u> <u>Form B236</u> <u>Form B3-3</u>
Superseded Memorandum D	D11-3-2 dated October 25, 1996