



**Asia-Pacific  
Economic Cooperation**

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## **Legal and Institutional Mechanisms to Support a Self-Certification Regime**

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# **Legal and Institutional Mechanisms to Support a Self-Certification Regime**

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## **Legal and Institutional Mechanisms in the United States**

- The Origin of Importer-based Self-Certification
  - North American Free Trade Agreement (NAFTA)
  - Customs Modernization Act
- Regulations and Statutes
- Publications

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## **North American Free Trade Agreement (NAFTA)**

- NAFTA implemented in 1994
- Used self-certification, but was an exporter-focused agreement
- Required NAFTA Certificate of Origin to be filled out by the exporter/producer

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## **North American Free Trade Agreement (NAFTA)**

- NAFTA Certificate of Origin must be signed, dated, and in the possession of the importer when the NAFTA claim is made
  - Required the importer to obtain the certificate of origin even if the importer has first-hand knowledge of the production process
- Presented upon request to CBP
- Under the terms of the NAFTA, preference claims could be denied for originating goods if the certificate of origin was not properly executed

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## North American Free Trade Agreement (NAFTA)

- CBP required the certificate of origin from the importer before beginning a verification
- Verifications were with the exporter/producer that signed the certificate of origin
- Importers could receive notices that a preference claim was denied with a bill for duties owed, even though they were not part of the verification process

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## Customs Modernization Act

- Also known as the “Mod Act”
- Became effective on December 8, 1993
- New concepts:
  - Shared responsibility between CBP and the import community
  - Informed compliance
    - CBP effectively communicates its requirements to the importer
  - Reasonable care
    - Importer uses reasonable care to assure that CBP is provided with accurate and timely data on importations

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## Customs Modernization Act

- Shifted the legal responsibility for declaring the value, classification, and applicable rate of duty to the importer
- Result: Importers held liable for meeting all U.S. laws and regulations applying to importations
  - Includes responsibility for substantiating trade preference program claims
- If importer exercises reasonable care but his shipment is found to not originate under the trade agreement:
  - Liable for duties
  - Not likely to be subject to penalties

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## Regulations

- Regulations issued for each free trade agreement
  - Provide information on importer requirements in making a trade preference claim
- Title 19, Code of Federal Regulations (CFR)  
<http://www.gpoaccess.gov>

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## Regulations Example

- U.S-Singapore FTA regulations,  
19 CFR 10.501-570

### § 10.510 Filing of claim for preferential tariff treatment upon importation.

- (a) *Claim.* An importer may make a claim for SFTA preferential tariff treatment, including an exemption from the merchandise processing fee, based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good. For goods that qualify as originating goods under the Integrated Sourcing Initiative (see subdivisions (b)(ii) and (m) of General Note 25, HTSUS, and §10.532 of this subpart), the claim is made by including on the entry summary, or equivalent documentation, the tariff item 9999.00.84, HTSUS, or by the method specified for equivalent reporting via an authorized electronic data interchange system. For all other qualifying goods, the claim is made by including on the entry summary, or equivalent documentation, the letters "SG" as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

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## Publications

- Informed Compliance Publications
  - published on a wide variety of topics including classification, value, reasonable care and recordkeeping
- Rulings
  - issued for prospective importations
  - are binding on the importer and CBP
  - remain in effect until revoked or modified
- Additional information
  - CBP also publishes information lists or required records for entry, list of approved gaugers and laboratories, and acceptable testing methods and procedures

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