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July 18, 2017

*Sent via email: NAFTA-Consultations-ALENA@international.gc.ca*

NAFTA Consultations
Global Affairs Canada
Trade Negotiations – North America (TNP)
Lester B. Pearson Building
125 Sussex Drive
Ottawa, ON K1A 0G2

**Subject: I.E.Canada NAFTA Submission**

Dear Sir/Madam:

On behalf of the members of I.E.Canada, the Canadian Association of Importers and Exporters, we respectfully make the following submission for consideration in the Government of Canada's objectives in the renegotiation and modernization of the existing North American Free Trade Agreement (NAFTA) with the United States and Mexico.

For 85 years, I.E.Canada has been the leading voice of the Canadian trading community. Our membership, which is located across Canada, is comprised of importers and exporters, including manufacturers, wholesalers, distributors and retailers, from a broad range of industries, as well as service providers. Our aim is to advance the interests of Canada and Canadian companies in the international trade arena and to ensure that Canadian importers and exporters have the appropriate Canadian legislative, regulatory and policies tools in place needed to succeed globally.

In light of Global Affairs Canada's NAFTA Consultation notice seeking input from interested parties, I.E.Canada undertook to canvass comments from its members. This submission is an amalgamation of all the comments received from members during outreach sessions, one-on-one meetings and written submissions. Given the complex nature of the subject matter, we welcome any clarifying questions that the Department may have on any of the information included in this submission.

Additionally, as the negotiations continue, we expect that other concerns may be brought forward by our members and we request the right to add to this document.

I.E.Canada appreciates the opportunity to provide our members' feedback with regards to NAFTA. We trust our input will prove helpful to the Government of Canada as they move forward with the re-negotiation. If there are any questions about this submission or should additional information be required, please do not hesitate to contact James Sutton, Director of Advocacy at jsutton@iecanada.com or (416) 595-5333 ext. 240, or the undersigned at ext. 224.

Sincerely,

Joy Nott
President & CEO
I.E.Canada, the Canadian Association of Importers & Exporters

# I.E.Canada NAFTA Submission

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# I.E.Canada NAFTA Submission

**Introduction**

NAFTA is critical to many I.E.Canada members, and as result, we developed a process to gather input and to ensure that we had appropriate representation from all industry sectors. In order to collect input, I.E.Canada surveyed members to identify interests and concerns. We then created six working groups based on tariff sections and classifications and collected feedback from members based on the same list of questions that guided each group's discussions (see Appendix A.) Keeping in mind the wide variety of interests amongst I.E.Canada members, there may be some places where a consensus was not reached, in which case, we have identified all the concerns and recommendations brought forward by members.

The scope of the exercise was limited to:

- NAFTA chapters
    - 3 National Treatment & Market Access
    - 4 Rules of Origin
        - Annex 401: Specific Rules of Origin
    - 5 Customs Procedures
    - 6 Energy and Basic Petrochemicals
    - 7 Agriculture and Sanity and Phytosanitary Measures
    - 19 Review and Dispute Settlement in Antidumping and Countervailing Duty Matters

The chapters of the submission have been set up to reflect the NAFTA sections listed above, along with general topic areas including customs and trade facilitation issues, treatment of specific goods, trade remedies, digital trade issues, competition related matters and other issues. Also attached are appendices providing more information on the process by which we consulted our members, as well as industry and product specific rule of origin challenges and proposed changes to resolve them.

I.E.Canada members support free trade agreements (FTAs) and are strong supporters of the benefits of NAFTA. NAFTA has had a dramatic impact on the economies of Canada, the United Stated and Mexico, and has resulted in the development of highly integrated multinational value chains. Because of NAFTA, businesses in all three countries source both components and finished goods from each other, to the benefit of both businesses and consumers.

I.E.Canada and its members believe the re-negotiation of NAFTA is an opportunity to modernize the agreement and to ensure it reflects the current economic realities of business, including global sourcing needs, extended supply chains and the continued evolution of international trade.

At the same time, I.E.Canada members urge the negotiating teams to 'do no harm.' The current NAFTA, while not perfect, works and our members have established a level of familiarity with the current rules and regulations. They have built their supply chains, and in some cases their entire businesses, around the agreement and these companies are succeeding because of NAFTA. It is imperative that the negotiators protect the gains made by the current agreement and not jeopardize market access.

I.E.Canada members were clear in their opinions that the former Canada-US FTA should not be seen as an option should NAFTA be cancelled. The Canada-US FTA was problematic when it was originally implemented and even more so now. The agreement is extremely old and does not fit today's current business realities. Most Canadian companies would not use it.

I.E.Canada members also expressed concern about the issues of supply management, softwood lumber and drywall. Their worry is that any one of these issues has the potential to highjack the negotiations entirely and they recommend that all three issues be carved out and dealt with outside of NAFTA. This is particularly true of softwood lumber, which has been a longstanding, ongoing irritant that will not be quickly or easily resolved. I.E.Canada members recommend continuing these discussions at the WTO.

Also outside the scope of NAFTA renegotiation and modernization is the topic of currency manipulation. The US government may try to characterize Canada's historically low Canadian dollar, in comparison to that of the US, as some form of currency manipulation by our government. Canada must stress this is not a reality and that current global economic forces should remain in place and NAFTA has no role to play on this topic.

**1.0 NAFTA**

1.1 Chapter 3 – National Treatment & Market Access

*Article 303: Restriction on Drawback and Duty Deferral Programs*
I.E.Canada members feel that the current drawback rules are complex and do not work well for modem global supply chains. Members say that under current procedures, it costs more to process the drawback than is recovered. The process is labour intensive, so few companies do drawbacks.

I.E.Canada members suggest the removal of 'lesser of' provision, as it is counterintuitive to the intent of NAFTA, and in doing so would foster increased domestic manufacturing and export competitiveness across North America – a win for all three parties. Additionally, a "same condition processes" that allow full drawback should be reviewed during the course of NAFTA modernization to ensure they are current to today's business realities and there are no lost opportunities.

Any moves to simplify and modernize the drawback process under NAFTA should consider alignment with upcoming US changes regarding substitution drawbacks and extension to five years for filing drawback applications.

*Article 305: Temporary Admission of Goods*
The current rules surrounding temporary admissions are administratively burdensome, requiring the identification of all countries of origin and values of incoming goods. Use of the temporary entry provision is often avoided as it is time consuming and costly, so goods are permanently cleared instead and duty paid (although this is still difficult.) Additionally, the inconsistent interpretation and application of the General Interpretive Rules to the Harmonized System of tariff classification and policy guidance for the classification of kits, toolboxes, test equipment amongst NAFTA partners creates a non-tariff barrier. Consideration should be given to where the kits and the like are assembled and declare the highest value component to facilitate clearance. This would create a streamlined uniform process that would encourage trade within NAFTA. Issues with respect to classification of kits, toolboxes, and test equipment are not limited to temporary admission.

*Article 306: Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials*
I.E.Canada members do not want to see the provisions of this article removed or its benefits diminished within a modernized NAFTA.

*Article 307: Goods Re-Entered after Repair or Alteration*
In spite of the fact that this article covers re-entry after repair or alteration, we raise here, the following important concerns about the lack of clarity and inconsistent application of the requirements for subheading 9801.00.10 - US and foreign goods returned to the US. Our members expressed considerable concern about the return of goods going to the US for repair and/or alteration. They would like to see US manufactured goods be allowed to re-enter the US claiming NAFTA benefits using a NAFTA certificate of origin. Note: in similar circumstances on re-entry to Mexico or Canada, NAFTA can be claimed. It should be the same for all three countries. Members would also like to see the removal of the US Manufacturer's Affidavit requirement for goods returning to the US for repair and temporary admissions. The current requirement for a US Manufacturer's Affidavit is a challenging non-tariff barrier and administrative burden for Canadian businesses returning US goods to the US. Making the return more difficult makes it more

costly for Canadian businesses to have US products serviced in the US when needed, with the added downside of an equal reduction in jobs and business for Americans.

Another concern with respect to goods returning to the US is that countervailing duties are being charged on subject goods, even when countervailing duties were already paid by the original US importer when the goods initially entered the US. These returning goods shouldn't be subject to countervailing duties upon re-entry to the US.

*Article 310: Customs User Fees*
It is critical not to lose current exemptions from customs user fees provided under NAFTA. Additionally, I.E.Canada members want the US Merchandise Processing Fees (MPF) and Mexico's Derechos de Trámite Aduanero (DTA) customs user fees eliminated for exports of Canadian origin goods that are Most-Favoured-Nation (MFN) duty-free on entry to these countries – regardless of whether the goods qualify under NAFTA or certificate of origin is available for them. Doing so would level the playing field from a MFN perspective, whereby Canada does not levy any customs user fees on imports – regardless of whether the goods qualify under NAFTA or not.

*Article 316: Consultations and Committee on Trade in Goods*
A better change process for an evergreen agreement is imperative. At its original inception, there was agreement that NAFTA could be adapted and evolve as needed over time, but in reality, that has not happened largely because the consultation and change process is cumbersome. To date, there have been five track processes with only three completed and implemented, the fourth being negotiated and finalized and never implemented, and the fifth having just begun as the current US president came into office. The current track process is too long, and there is no rigour in the process. I.E.Canada members would like to see a more structured consistent and transparent process for NAFTA review, update & modernization.

*Perimeter initiative*
The Regulatory Cooperation Council (RCC) is viewed by members as being of benefit to business and would like to see it continued and expanded to include Mexico so that all three countries are working to harmonize regulatory systems and facilitate trade. The aim should be to harmonize regulations except in cases where regulatory authorities can feel that doing so would pose a risk to health, safety and the environment. At the same time, the option to work on bilateral issues must be maintained.

When it comes to security, I.E.Canada members recognize that the way the US treats the southern border will and should be different than the way to US treats the northern border. We support continued efforts to increase security while facilitating trade under the Beyond the Border initiative.

1.2 Chapter 4 – Rules of Origin

*Article 401: Originating Goods*
I.E.Canada proposes the modernization of this NAFTA article, including additions of any new articles as needed, to incorporate provisions similar to those of more modern free trade agreements (e.g. the TPP Chapter 3 excerpts below), which address the treatment of recovered materials used in the production of a remanufactured good.

*Article 3.3: Wholly Obtained or Produced Goods*

*…*

*(j) a good that is:*

*(i) waste or scrap derived from production there; or*

*(ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and*

*(k) a good produced there, exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives.*

*Article 3.4: Treatment of Recovered Materials Used in Production of a Remanufactured Good*

*1. Each Party shall provide that a recovered material derived in the territory of one or more of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.*

*2. For greater certainty:*

*(a) a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods); and*

*(b) a recovered material that is not used or incorporated in the production of a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods).*

This applies to products that are dismantled or taken from a product in a NAFTA country and then disassembled into pieces; the pieces are binned and then a remanufactured product is created from the binned products. For example, a used, non-working motor is taken out of a car, shipped to a plant which breaks it down into useable pieces and cleans, etc. these pieces and bins them (puts the m in inventory); then a remanufactured motor is rebuilt from the binned pieces. This rule is currently allowed but through special legislation and not through NAFTA. It is in most, if not all, of the new agreements.

*Article 402: Regional Value Content*

Depending on what industry they are in, and the products being qualified, I.E.Canada members have a few basic comments about regional value content (RVC):

- They do not like the RVC rules and entirely prefer tariff shift based rules. One reason for this is the qualification processes can be more easily automated and managed using software.
- The RVC rules in NAFTA are outdated and I.E.Canada members would like to see them adapted to reflect updated provisions available in more modern agreements (CETA, TPP), where origin is conferred by way of processes.
- The RVC option provides additional flexibility when goods do not readily tariff shift or exceed De Minimis thresholds. Many I.E.Canada members depend on the option of using RVC to qualify their goods.

In modernizing NAFTA, it is in all parties' best interests to ensure importers and exporters have the greatest amount flexibility to choose the most suitable rule of origin options that best fits their business needs.

*Article 404: Accumulation*

I.E.Canada members are eager for a modernized NAFTA to include the adoption of cumulation provisions, such as those found in CETA, where third party mutual agreements can assist in the qualification of goods.

This would be a huge enhancement for Canadian businesses and would allow for the expansion of supply chains.

*Article 405: De Minimis*
I.E.Canada members recommend the following with respect to modernizing and enhancing the flexibility and accessibility of use for this article:

- Raise the threshold to 10% in alignment with other more modern FTAs.
- Add an option allowing De Minimis as percentage by volume of goods.
- Simplify the provision removing restrictions, particularly for Chapters 1 through 27 as well as 85.

*Article 412: Non-Qualifying Operations*
I.E.Canada members suggest consideration be given to the idea that the article language (shown below) should also work in the reverse, (i.e. an originating good should not be made non-originating by dilution that does not materially alter the characteristics of the good).

> *A good shall not be considered to be an originating good merely by reason of:*
>
> > *a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or*
> >
> > *b) any production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.*

*Article 414: Consultation and Modifications*
A better change process for an evergreen agreement is imperative. At its original inception, there was agreement that NAFTA could be adapted and evolve as needed over time, but in reality, that has not happened largely because the consultation and change process is cumbersome. To date, there have on been five track processes with only three completed and implemented, the fourth being negotiated and finalized and never implemented, and the fifth having just begun as the current U.S. president came into office. The current track process is too long, and there is no rigour in the process. I.E.Canada members would like to see a more structured, consistent and transparent process for NAFTA review, update & modernization.

1.3 Annex 401 – Specific Rules of Origin
When it comes to rules of origin, I.E.Canada members stress that specific rules of origin should not be changed unless Canadian companies identify them as being deficient.

In general, I.E.Canada members oppose changes to NAFTA rules of origin that make qualification more difficult, including any changes that will incent offshoring of production outside of North America. Creating additional hurdles or even higher thresholds for product qualification under NAFTA would drive supply chain sourcing, and even manufacturing, out of the NAFTA region. Further, small and medium-sized businesses that currently struggle to comply with NAFTA to gain access to larger markets are further disadvantaged by the additional complexity.

Many of the requirements are extremely burdensome and add red tape and costs that can impede trade. In some cases, US companies do not use the NAFTA rules of origin because they are so complex and costly, particularly when they apply to products with low import tariffs. An updated NAFTA with more efficient rules of origin and decreased complexity would be widely accepted.

*Tariff Shifts and/or RVCs*

Member views are split on their recommendations regarding tariff shift and regional value content (RVC) aspects of product specific rules of origin. They tended to fall into several camps:

- Small and medium-sized enterprises (SMEs) who have limited internal and financial resources for in-house or external professional expertise, tend not to use the NAFTA, because the rules of origin can be complex and administratively burdensome;
- Medium to large businesses, on the other hand, appreciate the flexible rules of origin, (tariff shift and/or RVC requirement), as it provides the opportunity to qualify goods that would not readily qualify solely by tariff shift;
- Members who believe combination rules are prohibitive, and would like to see tariff shifts only. This group does not like RVCs because they believe that that RVCs are too labour intensive and costly; and
- Members who prefer rule provisions that confer origin by way of processes, similar to those available in more modern FTAs, e.g. chemical reaction rules.

Generally, members would prefer to have the option to choose to use either RVCs or tariff shifts and would like NAFTA to be adapted to allow them this flexibility.

As a general note, all three NAFTA partners need to ensure that the Rules of Origin on their official sites are consistent across all three countries, and that these sites are consistently updated and maintained.

1.4 Chapter 5 – Customs Procedures

*Article 501: Certificate of Origin*

While many members would like to continue to use certificates of origin, they would like to see the process simplified so it is less costly and burdensome for both the importers and the exporters and producers certifying the goods. Our members also suggest having more options than just the certificate, e.g. an option for origin statements similar to those in more modern FTAs. Essentially there are 3 options:

- allow importers/exporters to choose which method they prefer, with no changes to the NAFTA certificate
- streamline the NAFTA certificate and also allow NAFTA statements
- leave current process untouched

If the certificate is to be modernized and streamlined, members recommend the elimination of fields 7, 8, and 9 as a starting point – or alternatively allowing their voluntary completion. In particular, the tariff preference field could be perceived as a non-tariff barrier for smaller businesses.

Members also suggest that uniform processes be established for digitization, electronic signatures, and the provision of certificates via email. Currently, Mexico requires that original certificates be submitted at time of clearance, which creates an administrative burden for businesses. This is an opportunity to modernize NAFTA to take advantage of digital technology capabilities that can facilitate modern, electronic certification, maintenance and record keeping.

Members would also like to see a provision allowing importers to issue certificates or statements of origin (similar to modern FTAs, e.g. CETA) regardless of exporter/producer input, e.g. an importer sources materials and maintains costing/Bill of Material information - however, manufacturing/production is actually done by subcontractor/co-manufacturer, with importer oversight/management. Clearly,

importers would need to understand the ramifications of certifying their own imports; self-certifiers would relish the additional control over their own NAFTA compliance in not having to rely solely on their suppliers.

Last but certainly not least, I.E.Canada members see a huge window of opportunity to improve the efficiency of blanket NAFTA certificate issuance and management, by not forcing their expiration after a maximum of twelve months. The obligation on an exporter to advise all parties they've issued certificates to, of any changes affecting their accuracy or validity, already exists in *Article 504* of the agreement. As such, circumstances warranting, blanket certificates should be allowed to remain in effect indefinitely. This change would be an enormous win-win for both importers and exporters, relieving them of an onerous administrative and costly burden in having to renew or solicit new certificates for goods whose qualifying status has not expired just because the date on a certificate says so.

*Article 502: Obligations Regarding Importations*
Members have significant concerns related to the one year time limit for filing NAFTA refund claims. Unless there is some important and reasonable rationale for a twelve month limit - other than the current legislative limits set in our Customs Act - which can be changed, the time limit for refund claims should extend beyond a year. I.E.Canada suggests parity with time limits for filing other types of refund claims and equal to the government's time limit to oblige importers to amend entries, i.e. four years. At a minimum, the extension should be three years in alignment with refund time limits under modern FTAs such as CETA.

*Article 506: Origin Verifications*
With respect to audits, the notification process is outdated. Currently, the notification of intent to audit is often sent to a general contact and address. Often, the audit notices are not received. A process in NAFTA by which Customs is required to validate receipt of the notice, before proceeding with revocation of NAFTA qualifying status/privileges, would be of benefit to businesses. This is another opportunity to update NAFTA to maximize the use of electronic communications; doing so could improve the timeliness of response, increase transparency and ensure that importers and exporters have received the notice of intent to audit. Development of electronic means for completion, submission, and exchange of verification questionnaires and supporting documentation is equally important and beneficial to trade and government too with decreased cost and increased efficiencies. We note that U.S. CBP uses the ACE portal to notify businesses of the issuance of *CF28 Request for Information* notices to them, but there is nothing similar in Canada. Finally, members would also like to see a consistent audit process across all three countries using the same timeframes so that trade knows what to expect regardless of country.

*Article 509: Advance Rulings*
Members question why applications must be submitted in advance of goods being imported into a NAFTA party and why there is no retroactivity. At a minimum, members would like to see retroactivity default back to the date of application OR to a specific period as needed by the applicant (assuming they can attest/prove goods retroactively qualified). The request for period of retroactivity could be incorporated within the application itself.

Another irritant to business is the fact that different countries apply conflicting tariff rulings on the same products, something that creates an administrative challenge to importing, and to reporting discrepancies on AES filing codes. It would be beneficial for tariff classification rulings to be made available to importers

and government authorities in all three countries to level the playing field and to improve transparency and compliance. Members wondered if there was a way to simplify disputes in tariff classifications, perhaps by using both classifications with a statement (agreed among the three partners) that both are accurate. Another option would be to use a 3rd party tribunal to specifically mediate issues around discrepancies in tariff classifications.

Issues with inconsistent rulings, processing timelines and issuance were also highlighted, as well as inconsistent application of NAFTA processing across different ports in both Mexico and the US. Members would like to see clear trilateral standards that must be adhered to by customs authorities in all three countries. Members would also like to see an easier way to make voluntary disclosures to US CBP; currently, disclosures require a manual notice to the individual ports. This may be an other opportunity to apply modern electronic communications technology.

With respect to the revocation or modification of rulings: 90 days is insufficient to adjust supply chain, pricing, and other business implications. Our members request longer timeframes be established, however, did not have specific extended timeframes to offer for consideration.

1.5 Chapter 6 – Energy & Basic Petrochemical

I.E.Canada acknowledges NAFTA's influence and immense benefits to the North American energy industry as demonstrated by substantial growth and high industry integration among NAFTA's three parties over the course of the last 23 years. Nonetheless, I.E.Canada members in this industry sector, many of whom volunteer on our Oil, Mining & Gas Committee, indicate sector specific NAFTA challenges do exist and there is room to modernize the agreement to the benefit of not only Canadians but also our North American energy partners. Complimentary to this submission, I.E.Canada's Oil, Mining & Gas Committee are making a separate NAFTA submission to Global Affairs Canada addressing very specific energy sector challenges.

1.6 Chapter 7 – Agriculture and Sanitary & Phytosanitary Measures

Members would like to see NAFTA establish that NRIs be afforded the same rights and treatment as resident importers, particularly with respect to PGA requirements.

*NAFTA Renegotiation and Food Safety*

Recognizing the shared food safety risks to North American food production and food imports, the integrated nature of U.S.- Canada agri-food supply chains and our common goals for achieving the highest possible levels of public health protection, NAFTA renegotiation presents an opportunity to strengthen food (and feed) safety outcomes by:

> Forming a new joint organization or program of work to (i) undertake science-based food safety risk assessments (hazard identification, hazard characterization, exposure assessment and risk characterization), (ii) develop best practices in food safety risk management and (iii) collect, analyze and communicate food safety knowledge for the benefit of consumers, government agencies, food producers and importers.

While each country would maintain decision-making authority over its food and feed safety standards and inspection practices, the joint organization would ensure a common scientific foundation for assessing and preventing emerging foodborne threats (microbiological, chemical and physical including, where

relevant, those linked to animal health through the "one health" concept); for recommending food safety risk thresholds for pathogens, residues, allergens, etc.; for approving food safety interventions, technologies and analytical test methods; for validating food safety best practices at all levels of food production, processing, distribution and preparation; for sharing and interpreting food safety testing and surveillance data gathered across North America and globally in relation to imports; and for recommending innovative, outcome-based food safety inspection practices and compliance promotion strategies.

1.7 Chapter 19 – Review and Dispute Settlement in Anti-Dumping & Countervailing Duty Matters

I.E.Canada members would not object to dissolution of Chapter 19 and anti-dumping complaints to a more global process at the WTO.

**2.0 Customs & Trade Facilitation Issues**

*North American Single Window Approach*

Following North American Leaders' Summits over the last two years, Canada, Mexico and the United States have committed and commenced, regarding their respective Single Window programs and related processes and requirements, to examine ways to streamline and align on many aspects of trade within the region, e.g. manifest, security, data, other government department requirements, exports, and e-commerce. With respect to these efforts, and within the context of NAFTA modernization, we encourage consideration of where and how the two efforts may intersect and mutually support the advancement of the others' goals and benefits.

*Trusted Traders & NAFTA*

In modernizing NAFTA we should also look at opportunities to improve North American security, customs and trade facilitation through the lens of trusted trader concepts, which could lend themselves among NAFTA partners for broader North American benefit. NAFTA was drafted pre-9/11, a time when the current focus on security was not as stringent. The focus of trusted trader programs is different in Canada, where the aim is security, expedited clearance and summary accounting, than in the US, where the focus is on security. In the US, CBP is struggling to articulate the benefits of its trusted traded programs and to modernize C-TPAT. In Canada, we have trusted trader program benefits that don't exist in the US. These, along with some concepts that CBSA are looking at under the New Commercial Vision, might be of interest to the US in their trusted trader discussions.

Given the Authorized Economic Operator (AEO) mutual recognition arrangements signed between the NAFTA partners, consideration should be given towards incorporating optional NAFTA benefits that could be available to these trusted traders in the other NAFTA partners, for example more lenient penalty regimes or expedited issuance of advanced rulings. Creation of NAFTA trusted trader benefits may encourage increased participation in these security based programs.

It was suggested the US and Mexico adopt summary accounting aspects from Canada's Customs Self Assessment (CSA) trusted trader program that would benefit both trade and government by simplifying processes and ensuring the receipt of accurate trade data while flexibly aligning customs accounting

processes with business process realities. This would be particularly beneficial in some industry sectors where transactions are settled in the month following importation.

*Preclearance of Cargo*
At the 3 Amigos meeting in June 2016, Canada, the US and Mexico agreed on the preclearance of travellers, but left the preclearance of cargo as footnote. A joint statement from Prime Minister Trudeau and President Trump, following their February 13, 2017 meeting, commits to establishing pre-clearance operations for cargo between Canada and the US. We understand work in Canada towards this end has begun in anticipation of Bill C-23 successfully making its way through Parliament. We understand the groundwork for cargo preclearance in the US may already exist and do not know where Mexico stands on this concept. While it may still be far out on the horizon, I.E.Canada encourages NAFTA negotiators to consider what cargo preclearance may require of a modern NAFTA to pre-frame provisions for the future, in advance of this initiative coming to fruition.

*Simplify in-transit process*
Members would like to see the process simplified for in-transit goods. When the Nipigon River Bridge, joining western and eastern Canada, was damaged and closed, goods being shipped across the country had to be re-routed through the US. The current process caused delays. There is a need to streamline the process to avoid backlogs when there is an emergency or it is more expeditious to ship goods in-transit.

*Labour Mobility*
Modern supply chain projects and contracts include installation and service personnel yet there are challenges to bringing in people from the vendor or subcontractor. The modernization, extension, and improvement of labour mobility clauses in NAFTA would be greatly beneficial.

**3.0 Treatment of Specific Goods**

*Standards and testing of equipment*
Despite the existence of bilateral recognition agreements, in-country testing is required on imported goods. In particular, the U.S. is trying to impose their standards on Canada and Mexico. Members would like to see a trilateral agreement on standards, or perhaps the adoption of another global standard in order to establish a level playing field.

*Disparity in NAFTA application due to US vs. Canadian Tariff Classification*
There is a 1997 US Customs Ruling on file that Track Type Tractors are Classified in Chapter 87, and therefor all their parts are classified in chapter 87 for US Customs. Canada classifies the same product as a bulldozer in chapter 84, and all their parts in heading 8431. This creates a significant disparity in NAFTA application, as Chapter 87 has duty, and Chapter 84 has little duty.

*Diesel engine reporting requirements*
Chapter 84 diesel engines installed in equipment or loose (not installed) are subject to extensive reporting requirements from Environment and Climate Change Canada. Sometimes data is required prior to import, or sometimes (for larger importers) yearly declaration of quantities with specific power ratings and emission details are needed. This should be collected up front by Single Window with "some" general

information that is available at time of import, then returned to the importer by CBSA/Statistics Canada for details that require engineering specifications.

*Equipment classified under Chapters 84 and 85*
Where additional equipment sold as kits or sets that are intended to expand capacity or enhance capability of previously imported equipment, the additional components should be classified/certified with the original machine or system, eliminating the requirement to classify/certify individual components.

**4.0 Trade Remedy Issues**

It is important to Canadian industry and to government that Canada's trade remedy process function effectively, efficiently, and transparently. Members are concerned that the US will seek to strengthen anti-dumping and countervail laws. They would not be adverse to the removal of NAFTA Chapter 19, and relying on WTO rules and arbitration processes.

**5.0 Digital Trade Issues**

Business operations have changed dramatically since NAFTA was first signed. Today, digital trade, a concept that didn't exist in 1993, has become a mainstay of businesses that use technology to deliver products and services globally and to manage business operations by moving data around the world. This is especially critical to small and medium sized businesses. I.E.Canada members encourage the negotiators to align data protection and privacy laws so that data can freely flow within NAFTA and to include strong digital trade provisions, similar to the e-Commerce Chapter included in the Trans-Pacific Partnership (TPP), in a modernized agreement.

*eCommerce & De Minimis*
De Minimis itself is not a NAFTA issue, however it could be seen by other countries as a potential trade barrier to exporting to Canada. That said, I.E.Canada disagrees with many recommendations from the Auditor General's Spring 2017 report, however one conclusion the report made – that the cost to the Canadian government on collections less than $200 is waste of tax payers money while the De Minimis rate is $20 – warrants some consideration.

I.E.Canada members take a split position on the De Minimis issue. Our position is that for commercial import shipments, De Minimis should be raised to a minimum of $200. We are aware that a rate of $200 for consumer imports shipments is harmful to Canadian retail business. That said, the U.S. recently increased De Minimis to $800 and are finding it is difficult to enforce and to administer. There is indication that the U.S. may be open to lowering their rate. For individual Canadian consumers' imports, however, I.E.Canada recommends that we keep the current rate of $20.

**6.0 Competition Related Matters**

*IP & Counterfeits*

I.E.Canada supports strong intellectual property protections under NAFTA, but encourages the negotiators to ensure IP protections follow the lines of newer trade agreements, such at the TPP. The US has cumbersome administration around intellectual property and counterfeits; NAFTA renegotiation is an opportunity to update the IP chapter by addressing existing enforcement concerns in all three countries, and ensuring any new obligations are applied by all three partners.

**7.0 Other Barriers to Trade**

Mexico should implement a reconciliation program. Currently, there is no mechanism for correcting entries for goods entering into Mexico, resulting in businesses sometimes doing a full recount of shipments at the Mexican border. This is a non-tariff barrier. Members suggest that the best practices be taken from existing programs in Canada and the US to create a program that works for all partners and one that provides electronic options for importers.

**Appendix A: List of 7 Questions Used to Direct Working Group Discussions**

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**Appendix B: Product Specific Rule of Origin Recommendations – raw data from member input**

*0712.90: Certain Dried Vegetables and Mixed Vegetables.*

The current rule reads:

> "A change to any other good of subheading 0712.90 from any other chapter".

Thus, a mixture of vegetables that contains a vegetable(s) that does not qualify for NAFTA will not qualify for NAFTA. Many of the mixtures of vegetables contain "foreign" vegetables. If the foreign vegetable is classified in a different subheading, then the de Minimis rule can be applied, i.e., the mixture will still qualify if the "foreign" vegetable(s) account for no more than seven percent of the total cost of the mixture. However, for 0712.90 there are foreign dried vegetables that are in the same subheading as the mixture. In this case, the de Minimis rule cannot be applied as the agreement requires that for Chapter 1 through 27 the non-originating material must be in a different subheading.

The rule could read:

> A change to any other good of subheading 0712.90 from any other chapter, or
>
> A change to subheading 0712.90 from 0712.90 or any other chapter, provided the non-originating product classified in 0712.90 *accounts for less than ??? percentage of the total cost.*

*1602 Prepared Meat (e.g. prepared meals)*

The current rule reads

> "A change to heading 16.01 through 16.05 from any other chapter".

Thus, a prepared meal consisting of greater than 20% meat that contains a prepared meat that does not qualify for NAFTA will not qualify for NAFTA. The prepared meals can contain "foreign" meat. If the foreign meat is classified in a different subheading, then the de Minimis rule can be applied, i.e., the mixture will still qualify if the "foreign" meat(s) account for no more than seven percent of the total cost of the meal. However, for 16.02 there are foreign dried meats that are in the same subheading as the meal (e.g. ground beef and a finished meal both in 1602.50. In this case, the de Minimis rule cannot be applied as the agreement requires that for Chapter 1 through 27 the non-originating material must be in a different subheading. This same issue applies to other headings in chapter 16.

The rule could read:

> A change to heading 16.02 from any other chapter, or
>
> No change in tariff classification for a good in heading 1602 provided there is a regional value content of ????

*1904 Prepared Cereal Products*

The current rule reads:

> "A change to subheading 1904.20 from any other subheading, except from chapter 20.

Thus, a cereal bar that contains roasted nuts or fruit prepared by, for example, crushing (classified in 2008) that do not qualify for NAFTA does not in itself qualify for NAFTA under the Annex 401 rule. Many of the cereal bars contain "foreign" nuts or fruit. If the foreign ingredient is classified in a different subheading, then the de Minimis rule can be applied, i.e., the bar will still qualify if the "foreign" ingredients account for no more than seven percent of the total cost of the mixture. The application of de Minimis is not helpful in many instances as the foreign nuts and fruit account for more than 7%. It is our understanding that the rule may be in place to protect the US peanut industry as the ground nuts are classified in 2008.11.

Thus, to protect the industry, the rule could read:

> A change to subheading 1904.20 from any other subheading, except from subheading 2008.11.

*2008 Prepared Fruit, Nut and Plant Products*

The current rule reads

> "A change to subheading 2008.19 to 2008.99 from any other chapter".

Thus, a fruit or nut bar that contains roasted nuts or fruit prepared by, for example, crushing (classified in 2008) that do not qualify for NAFTA does not in itself qualify for NAFTA under the Annex 401 rule. Many of the fruit or nut bars contain "foreign" nuts or fruit. If the foreign ingredient is classified in a different subheading, then the de Minimis rule can be applied, i.e., the bar will still qualify if the "foreign" ingredients account for no more than seven percent of the total cost of the mixture. The application of de Minimis is not helpful in many instances as the foreign nuts and fruit account for more than 7 %. Moreover, for 2008.19 there are foreign nuts that are in the same subheading as the nut or fruit bars and, thus, the de Minimis rule cannot be applied as the agreement requires that for Chapter 1 through 27 the non-originating material must be in a different subheading. It is our understanding that the rule may be in place to protect the US peanut industry as the ground nuts are classified in 2008.11.

The rule could read:

> A change to subheading 2008.19 from any other chapter, or
>
> A change to subheading 2008.19 from 2008.19 or any other subheading, except from 2008.11, provided the non-originating product classified in 2008.19 to 99 accounts for less than 50 percentage of the total cost.

A change to subheading 2008.**97** from any other chapter, or

A change to subheading 2008.**97** from any other subheading, except from 2008.11, provided the non-originating product classified in 2008.19 to 99 accounts for less than 50 percentage of the total cost.

*2103.90 Sauces and Preparations, Mixed Condiments and Seasonings*

The current rule reads

"A change to any other good of subheading 2103.90 from any other chapter".

Thus, a sauce or preparation that contains mixed seasonings, yeast, flavourings, (all of which are in chapter 21) that do not qualify for NAFTA does not in itself qualify for NAFTA under the Annex 401 rule. Many of the sauces and preparations contain "foreign" seasonings, yeast and flavourings. If the foreign ingredient is classified in a different subheading, then the de Minimis rule can be applied, i.e., the sauce or preparation will still qualify if the "foreign" ingredients account for no more than seven percent of the total cost of the mixture. However, for 2103.90 there are foreign mixed seasonings or condiments that are in the same subheading as the sauce and preparation. In this case, the de Minimis rule cannot be applied as the agreement requires that for Chapter 1 through 27 the non-originating material must be in a different subheading.

The rule could read:

"A change to any other good of subheading 2103.90 from mixed seasonings or condiments in 2103.90 or any other chapter".

*2104 Prepared Soups and Broths*

The current rule reads

"A change to heading 21.04 from any other chapter".

Thus, a soup or broth that contains mixed seasonings, yeast, flavourings, (all of which are in chapter 21) that do not qualify for NAFTA does not in itself qualify for NAFTA under the Annex 401 rule. Many of the soups or broths in 21.04 contain "foreign" seasonings, yeast and flavourings. If the foreign ingredient is classified in a different subheading, then the de Minimis rule can be applied, i.e., the food preparation will still qualify if the "foreign" ingredients account for no more than seven percent of the total cost of the mixture. The application of de Minimis is not helpful in many instances as the mixed seasonings, yeast, flavourings account for more than 7 %.

The rule could read:

"A change to heading 21.04 from any other chapter, or

A change to heading 21.04 from yeast or flavouring in 2106.90 or mixed seasonings and condiments or any other chapter, provided the non-originating product classified in chapter 21 accounts for less than ??? percentage of the total cost.

*2106.90 Food Preparations*

The current rule reads

"A change to 2106.90 from any other chapter".

Thus, a food preparation that contains mixed seasonings, yeast, flavourings, (all of which are in chapter 21) that do not qualify for NAFTA does not in itself qualify for NAFTA under the Annex 401 rule. Many of the food preparations in 2106.90 contain "foreign" seasonings, yeast and flavourings. If the foreign ingredient is classified in a different subheading, then the de Minimis rule can be applied, i.e., the food preparation will still qualify if the "foreign" ingredients account for no more than seven percent of the total cost of the mixture. However, for 2106.90 there are foreign flavourings that are in the same subheading as the preparation. In this case, the de Minimis rule cannot be applied as the agreement requires that for Chapter 1 through 27 the non-originating material must be in a different subheading.

The rule could read:

"A change to 2106.90 from any other chapter, or

A change to subheading 2106.90 from 2106.90 or mixed seasonings and condiments or any other chapter, provided the non-originating product classified in 2106.90 accounts for less than ??? percentage of the total cost.

*5404.19 Synthetic Monofilament*

An I.E.Canada member's second largest volume of NAFTA imports into Canada is for Synthetic Monofilament HS Code 5404.19. Approximately 80 to 100% of the industrial fabrics for pulp and paper (forming fabrics, dryer fabrics, press fabrics and other technical fabrics) are woven with synthetic monofilament. Most of their monofilament suppliers are in the USA, one of them is a related company. Both Canadian manufacturing facilities use this monofilament in their weaving operation.

The **current NAFTA rules of origin are clear and simple (Chapter Shift) and do not have quota or regional value content rules**. The current NAFTA rule of origin for 5404 is:

A change to headings 5401 through 5406 from any other chapter, except from headings 5201 through 5203 or 5501 through 5507.

Regional value content rules would be more burdensome than the chapter shift rules as calculations and documentation would need to be maintained for each batch of monofilament. Under the chapter shift rules they can perform the analysis for a monofilament type and update if the bill of materials change.

*5911 Textile products and articles, for technical uses, specified in Note 7 this Chapter*

An I.E.Canada member manufactures industrial fabrics in Canada and the USA. They sell their products to numerous customers in all three NAFTA countries.

This member's largest volume and dollar value for NAFTA shipments is industrial fabrics for pulp and paper (forming fabrics, dryer fabrics, press fabrics and other technical fabrics) HS Code 5911, specifically 5911.31, 5911.32 and 5911.90. The **current NAFTA rules of origin are "yarn forward" rules and are clear and simple (Chapter Shift) not requiring a quota or regional value content calculations**. The current NAFTA rule of origin for 5911 is:

> A change to heading 5911 from any other chapter, except from headings 5111 through 5113, 5208 through 5212, 5310 through 5311, 5407 through 5408 or 5512 through 5516.

Regional value content rules would be burdensome to maintain as each fabric is a unique product – our member only ever makes one of each fabric number. If they had to meet regional value content then a calculation and documentation would have to be maintained for every fabric. Under the chapter shift rules, they can perform the analysis for a product line and update if the bill of materials change.

Some of these industrial fabrics are produced in the USA and imported into Canada for sale to Canadian customers, and some of these industrial fabrics are produced in Canada and shipped to the USA for sale to US or Mexican customers.

For comparison purposes within the context of NAFTA modernization, our member also notes that CETA is of limited use to them and does not level the playing field for their product. Their competitor fabrics can enter Canada duty free without having to use CETA.

The CETA product specific rules of origin for HS Codes 5911 require that the monofilament is woven and printed/coated in Canada. The monofilament that they use is produced in the USA and the fabrics are woven and finished in Canada but are probably not printed and are not coated. They are having to hire consultants to determine if the instruction information that they stencil onto the start of the fabrics to aid in the installation onto the paper machine would qualify as printing, but they are not optimistic. If they cannot qualify their product under the product specific rules of origin, then to get their Canadian made fabrics imported duty free under CETA they would need to use the quota regulations, which can be problematic and burdensome to maintain.

*-Chapter 71 Rule Inconsistency - Canada vs. US*

The following Chapter 71 Heading rule note in the US HTS General Note 12 for NAFTA is not included among the product specific rules of origin published in the Justice Canada version of the NAFTA Rules of Origin. Which is correct?

US suppliers are looking at this rule and Canadian importers do not see the same note. This puts Canadian consumers at a disadvantage.

> *Heading rule: Pearls, permanently strung but without the addition of clasps or other ornamental features of precious metals or stones, shall be treated as an originating good only if the pearls were obtained in the territory of one or more of the Parties.*

*2. A change to headings 7113 through 7118 from any heading outside that group.*

*7408 Copper Wire*

Current rule of origin for 7408:

1.a 7408.11.aa A change to tariff item 7408.11.aa from any other chapter or;

1.b A change to tariff item 7408.11.aa from heading 74.01 through 74.02 or tariff item 7404.00.aa, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

a. 60 percent where the transaction value method is used, or

b. 50 percent where the net cost method is used

2.a A change to subheading 7408.11 from any other heading, except from heading 74.07

The primary material used to produce copper rod is primarily copper cathode (7403), available today from one single Canadian Copper Refinery, and supplemented with both originated cathode and non-originating cathode in order to meet market demand for copper rod.

In all cases, Cathode is imported duty free under MFN into Canada. However, use of non-originating cathode in the production of copper rod can affect NAFTA status of the product based on its size (cross sectional diameter).

Generally, there are three sizes of rod produced within the NAFTA territories: 8mm (5/16"); 10mm (.390"), and 12.5mm (1/2").

In order to claim NAFTA on the goods entering into the US, the importer must meet the rule of origin as stated in US General Note 12 of the US Harmonized Tariff of the United States, in particular, rule 74(5) and 74(6). As rule 74(5) is written, 8mm copper rod produced from non-originating copper would not be entitled to NAFTA and would be subject to 3% duty upon entry into the US. However, the 10mm and 12.5mm rod made from exactly the same material would be entitled to preferential treatment under NAFTA.

The vast majority of 8mm rod produced in Canada is exported to the US placing domestic producers at a competitive disadvantage to its US competition. This is because even though the US rod mills are subject to the same NAFTA rules of origin, they can use non-originating cathode in the production of 8mm rod and export it to Canada duty free even though their rod is non-NAFTA originating. This creates an unlevel playing field.

A change to the rules of origin for rod would allow Canadian producers to source its cathode from non-NAFTA sources without being penalized relative to its US competition

In comparing other free trade agreements held by the United States with countries that Canada also shares similar bilateral trade agreements, the US adapts the heading rule 7408: A Change to 74.08 from any other heading except 74.07. This includes FTAs between the US and Chile, Columbia, Costa Rica, Honduras Panama, and Peru.

Canada extends the same rule of origin in its free trade agreements with Israel and Jordon, and in fact, Canada goes one step further with its agreements with Columbia, Korea and Peru and collapsed the rules for chapter 74 into one single rule. The single rules reads **74.01-74.19 A change from any other heading.**

While Canada has two major free trade agreements that have been signed and are pending implementation, the TPP is of primary significance whereby the rules of origin for 7408 are viewed as the preferred future end state of final NAFTA rules for both trading partners as evidenced by both signatories, Canada and the United States, previously agreeing to and signing off on the specific rules of origin contained with the TPP agreement. By adapting the TPP rules of origin in the NAFTA agreement, this would restore Canadian copper rod producers back in line competitively with its major competitor and trading partner, the United States, thereby preserving jobs in Canada and protecting the only copper rod mill remaining in Canada.

Proposed change to the NAFTA rule of origin for 7408:

1.a Delete

1.b Delete

2.a A change to heading 7408 from any other heading, except from heading 74.07

*8471 .70 Storage Units*

Goods classified under 8471.70 require hard drives contained within the storage units to be of NAFTA origin. This provision is extremely difficult to meet. A rule that would not require a tariff shift would be more beneficial.

*84/85 – Multiple Subheadings*

| Sub Heading | Change Requested | Old Rule | New Proposed Rule |
|---|---|---|---|
| 8407.90 Engines for Petroleum Applications | Request creation of new breakout rule that eliminates RVC requirement and allows for Change to Subheading. | A change to subheading 8407.90 through 8408 from any other subheading, including another heading within that group, provided there is a regional value content of not less than:<br>(A) 60 percent where the transaction value method is used, or<br>(B) 50 percent where the net cost method is used. | A change to subheading 8407.90 from any other heading. |
| 8408.10 Marine Engines | Request creation of new breakout rule that eliminates RVC requirement and allows for Change to Subheading. | A change to subheading 8407 through 8408.10 from any other subheading, including another heading within that group, provided there is a regional value content of not less than:<br>(A) 60 percent where the transaction value method is used, or<br>(B) 50 percent where the net cost method is used. | A change to subheading 8408.10 from any other heading. |
| 8408.90 Industrial Engines | Request creation of new breakout rule that eliminates RVC requirement and allows for Change to Subheading. | A change to subheading 8407 through 8408.90 from any other subheading, including another heading within that group, provided there is a regional value content of not less than:<br>(A) 60 percent where the transaction value method is used, or<br>(B) 50 percent where the net cost method is used. | A change to subheading 8408.90 from any other heading. |
| 8411.11-8411.82-Turbines | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | (A) A change to subheading 8411.11 through 8411.82 from any other subheading outside that group; or<br>(B) A change to subheadings 8411.11 through 8411.82 from subheadings 8411.91 through 8411.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheading 8411.11 through 8411.82 from any other subheading outside that group |

| | | | |
|---|---|---|---|
| 8427.20. Telehandlers | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | (A) A change to tariff item 8427.20.aa from any other subheading, except from heading 8407 or 8408 or subheading 8431.20 or 8483.40; or<br>(B) A change to tariff item 8427.20.40 from heading 8407 or 8408 or subheading 8431.20 or 8483.40, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheading 8425.11 through 8430.69 from any other subheading. |
| 8427.20 Telehandlers | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | (A) A change to subheading 8427.20 from any other subheading, except from subheading 8431.20; or<br>(B) A change to subheading 8427.20 from subheading 8431.20, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheading 8425.11 through 8430.69 from any other subheading. |
| 8428. – 8430 Machines for Public works | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | (A) A change to any subheading in the group of heading 84.28 through 84.30 from any other subheading outside that group, except from heading 8431; or (B) A change to headings 8428 through 8430 from heading 8431, whether or not there is also a change from any heading outside that group, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheading 8425.11 through 8430.69 from any other subheading. |

| | | | |
|---|---|---|---|
| 8436.10 – 8436.80 Feller Bunchers, Track Harvesters | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | (A) A change to subheading 8436.10 through 8436.80 from any other subheading; or<br>(B) A change to subheadings 8436.10 through 8436.80 from subheadings 8436.91 through 8436.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheading 8436.10 through 8436.99 from any other subheading. |
| 8479.10-8479.82-Asphalt Paving Equipment | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | (A) A change to subheading 8479.10 through 8479.82 from any other subheading; or (B) A change to subheadings 8479.10 through 8479.82 from subheading 8479.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheading 8479.10 through 8479.89 from any other subheading. |
| 8479.89-Landfill Compactors | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | (A) A change to subheading 8479.89 from any other subheading; or (B) A change to subheading 8479.89 from subheading 8479.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheading 8479.10 through 8479.89 from any other subheading. |
| 8502-Diesel Gensets, Gas Gensets, Electrical Systems | Request change to existing rule that eliminates RVC requirement and allows for Change to Heading. | (A) A change to heading 8502 from any other heading, except from headings 8406, 8411, 8501 or 8503; or (B) A change to heading 8502 from headings 8406, 8411, 8501 or 8503, whether or not there is also a change from any other heading, provided there is a regional value content of not less than: (1) 60 percent where the transaction value method is used, or | A change to heading 85.02 through 85.03 from any other heading. |

| | | | |
|---|---|---|---|
| 8483.40-8483.60 Transmissions | Request change to existing rule that eliminates RVC requirement and allows for Change to Subheading. | A change to subheadings 8483.40 through 8483.60 from any subheading outside that group, except from subheadings 8482.10 through 8482.80, tariff items 8482.99.05, 8482.99.15 or 8482.99.25, or subheading 8483.90; or<br>(B) A change to subheadings 8483.40 through 8483.60 from subheadings 8482.10 through 8482.80, tariff items 8482.99.05, 8482.99.15 or 8482.99.25, or subheading 8483.90, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:<br>(1) 60 percent where the transaction value method is used, or<br>(2) 50 percent where the net cost method is used. | A change to subheadings 8483.40 through 8483.60 from any subheading. |

*8544.70 Optical Fibre Cable*

Current rule of origin for 8544.70:

A. A change to subheading 8544.70 from any other subheading, except from heading 70.02 or 90.01

B. A change to subheading 8544.70 from heading 70.02 or 90.01, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

a. 60 percent where the transaction value method is used, or

b. 50 percent where the net cost method is used.

For the purposes of headings 9002, the term "optically worked" refers to glass the surface of which has been ground or polished in order to produce the required optical properties. This optical fibre is the primary raw materials used to produce optical fiber cables.

For the most part, optical fiber is available from North American producers and would fall under NAFTA rule A above with finished goods NAFTA qualified.

However, the North American finished goods manufacturer producing similar products using newer technology are not able to qualify their finished goods using non-originated optical fibre unless they can meet rule B - RVC.

Adding to manufacturing processes and technical complexity, North American purchasers place demands on North American producers that stipulate that they must use newer optical fiber technology not available in North America thereby removing the option to use NAFTA originating raw materials in order to meet the performance standards of the finished goods for North American customers.

In comparing other free trade agreements that Canada currently has in place, other than the Chile and NAFTA free trade agreements, the rules of origin are written to collapse the rule into one single rule as stated 8544.70; a change to 8544.70 from any other heading

The TPP is of primary significance as Canada and the US also agreed to adapt the same single rule and is viewed as the preferred end state for both suppliers of raw material optical fibers and manufactures of finished optic fiber cables. Accordingly, adapting the TPP rule into NAFTA would allow North American optic fiber cable manufactures to remain competitive within it borders by sourcing both domestic and non-domestic optical fibers in order to continue to supply our markets with the newest technology available globally.

Proposed change to the NAFTA rule of origin for 8544.70:

> A change to heading 8544.70 from any other heading