

September 28, 2007

## Federal Court in Texas Denies Ford Motor Company's Motion to Dismiss in \$42 Million Customs Recordkeeping Lawsuit

In a decision that could send shockwaves down the operations of every business taking advantage of NAFTA's preferential duty treatment, the U.S. District Court for the Western District of Texas handed down an order yesterday denying defendant Ford Motor Company's motion to dismiss a \$42 million recordkeeping lawsuit brought by U.S. Customs and Border Protection ("Customs").

The lawsuit commenced due to Ford's refusal to answer an administrative summons by Customs demanding documents relating to imports of automotive products from Mexico under a NAFTA Certificate of Origin. Ford claimed that the documents sought by Customs—all involving components used by the exporter in Mexico to manufacture the products purchased by Ford—were not "entry records," and thus Ford had no obligation to maintain those records; nor could the government impose a penalty for Ford's refusal to produce them.

The Court disagreed with Ford, first pointing to the "(a)(1)(A) list" of entry records, which includes "NAFTA Certificate[s] of Origin and supporting records." It then held that, as a matter of law, the documents requested by Customs were "supporting records" to the NAFTA Certificates of Origin and therefore qualified as entry records. The Court went on to reject Ford's arguments that it should not be responsible for documents that were both created and maintained solely by the exporter. It also held that Ford did not show any conflicting statutes and regulations that would warrant modifying the (a)(1)(A) list.

Finally, the Court noted that Customs' own publication, NAFTA Focused Assessment Program Guidelines, states that an importer is not responsible to maintain supporting documentation that is certified by the exporter on the Certificate of Origin. Nonetheless, it held that this Customs manual, even with its contradictory information, does not have the force of law to trump the (a)(1)(A) list recordkeeping requirements.

This decision allows Customs to continue pursuing Ford for major penalties. More importantly, it may saddle importers in similar situations with the burden of obtaining and maintaining thousands of additional documents from foreign suppliers, in the event Customs should request them. Should the Court's ruling be sustained, other companies doing business under NAFTA could be compelled to drastically overhaul their recordkeeping systems and their business relationships with foreign suppliers.

## We Can Help

If you have any questions about the recent Ford decision, its impact on recordkeeping or penalty cases involving Customs, or other Customs and International Trade issues, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below.

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