

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: FO:TP:I:Q

CUSTOMS DIRECTIVE NO. 3230-044

DATE: AUGUST 5, 1999

SUPERSEDES:

REVIEW DATE: AUGUST 2001

SUBJECT: QUOTA AND DUTY REFUND REQUESTS: TPLs/TRQs

1 PURPOSE. To provide guidance to Customs officers whose responsibilities include reviewing duty refund requests for NAFTA preferential tariff treatment involving Tariff Preference Levels and Tariff Rate Quotas (TPLs/TRQs) pursuant to provisions of the North American Free Trade Agreement (NAFTA).

2 POLICY. The references and procedures outlined in this directive will be followed to ensure that refunds are properly administered and quota charges are properly applied for merchandise subject to TPLs and TRQs under the NAFTA.

3 AUTHORITIES/REFERENCES. 19 CR 12.132(b), 19 CFR Part 132, 19 CFR Part 173, 19 CFR Part 174, 19 CFR Part 181, 19 CFR Part 191, Harmonized Tariff Schedule of the United States, (Section XI, Additional U.S. Notes 3, 4, and 5; Section XXII, Subchapter VI, U.S. Notes 1, 21, and 22), Appendix 6.B. to Annex 300-B of the North American Free Trade Agreement, dated December 1993, CIS HB 3200-08, dated March 1998, NAFTA Fact Sheet #17, dated January 1, 1994, Quota Book Transmittal 98-12, dated September 8, 1998, Textile Book Transmittal 99-001, dated December 29, 1998.

4 DEFINITIONS. The following definitions are provided for process facilitation.

4.1 Tariff Preference Level (TPL). A TPL applies to Canadian and Mexican textiles pursuant to the North American Free Trade Agreement (NAFTA) and described in Section XI, Additional U.S. Notes 3, 4, and 5 of the Harmonized Tariff Schedule of the United States. A TPL provides for a Customs duty at a preferential (NAFTA) rate to textile imports that do not qualify for NAFTA, up to a specified quantity.

4.2 Tariff-rate quota. A tariff-rate quota permits a specified quantity of merchandise to be entered or withdrawn for consumption at a reduced rate during a specified period. For purposes of this directive, orange juice from Mexico is the only commodity under consideration for tariff-rate quota eligibility.

4.3 Certificate of Eligibility. A valid Certificate of Eligibility issued by the governments of Canada or Mexico in conjunction with a claim for NAFTA preferential tariff treatment is required for non-originating textile and apparel goods subject to the tariff preference level provisions of Appendix 6.B. to Annex 300-B of the NAFTA and additional U.S. Notes 3 through 6 to Section XI, Harmonized Tariff Schedule of the United States.

4.4 Quota Rate Export Certificates (“Cupos”). “Cupos” are issued by the Mexican government to Mexican producers for a fee and prepared in connection with a claim for NAFTA preferential tariff treatment. The annual quota quantity is monitored and controlled by the Mexican government through the “Cupo” process. At this time, “Cupos” are issued only for imports of orange juice from Mexico.

5 RESPONSIBILITIES.

5.1 It is the responsibility of all Port Directors to carry out the provisions of this directive and to disseminate its contents to Customs field officers who review and process duty refund requests for quota-class merchandise subject to NAFTA TPLs or TRQs.

5.2 It is the responsibility of all Directors, Field Operations to see that the provisions of this directive are carried out uniformly and effectively throughout their respective Customs Management Centers.

6 PROCEDURES.

6.1 A filer may claim tariff preferential treatment within prescribed time limits, and therefore request remittance of duties paid at the over-quota rate for TPLs/TRQs using the processes described below. Customs must be mindful that such requests are not always valid or appropriate. And as such, Customs officers must be cognizant of quota status, liquidation status, and the timeliness of claims before honoring requests for duty refunds through 514 protests, 520(c)(1)s, 520(a)(4)s, 520(d)s, and Supplemental Information Letters (SILs). To protect the revenue of the United States and to avoid the replication of any duty refunds, Customs officers must carefully review all claims for evidence of prior refunds.

6.1.1 Pursuant to 19 CFR 191.3(c), payment of drawback duties is allowed for definitive products paid at an over-quota rate of duty. Therefore, merchandise subject to an over-quota rate of duty established under a TPL/TRQ may have been remitted through drawback prior to the Customs officer’s review of a prevailing refund claim. To avoid duplicating duty refunds that pertain to claims for preferential tariff treatment, Customs officers may verify the existence of a drawback refund using the DKJL function code.

6.1.2 A Certificate of Eligibility or a “Cupo” is submitted at the time tariff preferential treatment involving a TPL or TRQ is claimed, respectively. If a filer does not furnish a certificate or “Cupo” with his initial entry summary submission, he may file the certificate or “Cupo” at a later date using an appropriate mechanism described below. The time of presentation for merchandise eligible for a TPL or TRQ that was entered into consumption without the initial submission of the certificate will be the time the certificate is submitted to Customs.

6.2 Post Importation Claims Processed in the Same Quota Period. The Automated Commercial System (ACS) is currently programmed to charge quota in accordance with the time of presentation that is input through the quota module using the QSUP function code. For this reason, Customs personnel must ensure priority handling of TPL/TRQ claims for tariff preferential treatment when received to avoid charging quota to a subsequent quota period.

6.2.1 Quota-class entries must be expeditiously processed through the ACS Quota Module using the function code QSUP and receive the "ACCEPTED" status message for all applicable quota lines before any refunds are allowed. Presentation of a certificate or "Cupo" does not guarantee the low rate of duty. The quota must be open. Be mindful that a TPL or TRQ could fill while a protest, SIL, or other administrative action is waiting for review leading to the risk of overfilling the quota.

6.2.2 Protests (514). A filer may submit a claim, under a protest, requesting NAFTA preferential tariff treatment for articles subject to TPLs and tariff-rate quota class merchandise, i.e., orange juice from Mexico. Filers will adhere to the normal protest procedures outlined in 19 CFR 174.12. All claims must contain either a Certificate of Eligibility for articles subject to TPLs or a valid "Cupo" for imports of orange juice.

6.2.3 Refund Requests 520(c)(1)/520(a)(4). If a filer applies for a refund using a 520(c)(1) or 520(a)(4) request, Customs personnel should render a decision that adheres strictly to the regulatory provisions of 19 CFR 173.4 and 173.4a, respectively. Both mechanisms are limited in scope to their use and appropriateness.

6.2.4 Refund Requests 520(d). The textile and apparel goods cited in this directive, because they are non-originating, do not qualify for consideration under a 520(d) claim. Orange juice from Mexico, however, is originating. Therefore, filers are permitted to file a claim, under a 520(d), requesting NAFTA preferential tariff treatment for orange juice from Mexico pursuant to the provisions of 19 CFR 181.21, Subpart C. A valid "Cupo" is required.

6.2.5 Supplemental Information Letter (SIL). A filer may submit a claim, under a SIL, requesting NAFTA preferential tariff treatment for articles subject to TPLs or tariff-rate quota-class merchandise, i.e., orange juice from Mexico. All claims must contain either a Certificate of Eligibility for articles subject to TPLs or a valid "Cupo" for imports of orange juice from Mexico.

6.3 Post Importation Claims Processed in a Different Quota Period. Filers have the option to claim tariff preferential treatment at the time of entry summary or to claim tariff preferential treatment at a later time that may occur in a quota period that differs from the quota period in which the merchandise was released. Claims filed at a later time must be filed within the prescribed time limits governing each refund option cited in 6.2.2 through 6.2.5. However, because current ACS programming does not allow for quota charges outside of the prevailing quota period, the quota can only be charged for the period that correlates with the time of presentation. The following procedure will be

followed until such time ACS programming can accommodate quota charges for different quota periods and/or a definitive administrative ruling is issued on this subject.

6.3.1 If a Certificate of Eligibility and/or “Cupo” is submitted for TPLs/TRQs subject to quota limits during a quota period that is different from the current quota period, Customs field officers should conduct a thorough review of the transaction in question, inclusive of any documentation that assists in the decision as to whether or not the claim is valid. Customs field officers can contact Headquarters Quota via ACS E-Mail attribute HQ Quota for additional assistance at the time a valid refund request is filed as well. A determination on all such requests dealing with prior quota periods should be made on a case-by-case basis.

7 MEASUREMENT. Customs field offices will have successfully executed the requirements of this directive when the following is accomplished:

7.1 All refund requests that pertain to TPL and TRQ eligibility under the NAFTA are evaluated for timeliness and if timely, the requests are appropriately acted upon in deference to quota status.

7.2 All quota-class merchandise is reviewed, evaluated, and validated before refunds are issued.

Assistant Commissioner
Office of Field Operations