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CUSTOMS DIRECTIVE NO. 3550-070A

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SUBJECT: FILING AND PROCESSING CLAIMS UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

1 PURPOSE. This directive provides policy and instructions for filing claims under the North American Free Trade Agreement (NAFTA), including post-importation and corrected claims. It also outlines the procedures for processing such claims. This directive should be read in conjunction with 19 CFR 181, Subparts C and D.

2 POLICY. A claim for preferential tariff treatment of an originating good made according to the procedures outlined in this directive must be approved unless the Port Director conducts an origin verification and determines according to 19 CFR 181.71 that the goods are not eligible for preferential NAFTA rates of duty.

3 AUTHORITIES/REFERENCES. Article 502 of the NAFTA; 19 CFR 181, Subparts C and D.

4 RESPONSIBILITIES. The Assistant Commissioner, Office of Field Operations; Director, Trade Programs; Directors, Field Operations; Port Directors; and Assistant Port Directors will ensure that the procedures in this directive are followed. It is the Port Director's responsibility to distribute this directive to people doing business with Customs.

5 PROCEDURES. A claim for preferential tariff treatment under the NAFTA may only be made at (1) the time of filing the entry summary or (2) after the filing of the entry summary, but no later than 1 year from the date of importation, under the provisions of 19 U.S.C. 1520(d) (see also 19 CFR 181.31).

5.1 Claims Made at the Time of Filing the Entry Summary. A claim for preferential tariff treatment for a good under the NAFTA is made by using the Special Program Indicator (SPI) "CA" for products of Canada or "MX" for products of Mexico as a prefix to the HTSUS number under which the good is classified. This claim is made at the time of filing of the entry summary. The Certificate of Origin must be in the possession of the importer at the time preferential tariff treatment for an originating good is claimed.

5.2 Importers claiming preferential tariff treatment for textiles. Importers claiming preferential tariff treatment for textile goods under a tariff preference level (described in Annex 300-B of the NAFTA) and for articles altered or repaired (HTS 9802.00.40 and 9802.00.50) will not have a Certificate of Origin since these goods are not originating (as that term is defined in Article 401 of the Agreement). A claim for preferential tariff treatment for textile goods under a tariff preference level cannot be accepted until the

line item has been processed through quota in accordance with existing instructions.

5.3 Claims made for goods whose regional value content was calculated under the net cost method. Importers must identify shipments of goods whose regional value content was calculated using the net cost method by transmitting the net cost indicator during the ABI transmission and by annotating the entry summary with "NET" in Column 33 of Customs Form 7501.

5.4 Post-Importation Claims. An importer may file a claim for NAFTA preferential tariff treatment for originating goods after the entry summary is filed but no later than 1 year from the date of importation (see 19 CFR 181.31). Note: The clock for the 1 year period starts on the day following the date of importation. Such post-importation claims are to be made in writing to the Port Director of the port where the good was entered, and shall include:

5.4.1 A written declaration that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

5.4.2 A copy of each Certificate of Origin pertaining to the good unless not required under 19 CFR 181.22(d);

5.4.3 A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If so, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

5.4.4 A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA. If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

5.4.5 A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law, and if any such protest or petition or request for reliquidation has been filed, the statement shall identify the protest, petition or request by number and date.

5.5 Receipt of a Claim. Upon receipt of a post-importation claim, the Entry/Protest Unit shall date stamp the claim and enter it along with the associated entry summary into the protest module using PMAA. The claim shall be entered as a 520(d). The Automated Commercial System (ACS) will automatically generate a number which

identifies the claim as a 520(d) claim when correctly entered as such in the protest type field of the PMAA screen. A numbered copy of the claim shall be filed in the master file.

5.5.1 If the entry summary is unliquidated and not scheduled for liquidation. Upon receipt the claim shall be forwarded immediately for processing to the team where the entry summary is being held. The date the claim was forwarded to the team shall be entered into the "date recvd" field on the PMBC screen.

5.5.2 If the entry summary is unliquidated but scheduled for liquidation. Upon receipt the liquidation shall be unset and the summary retrieved. The date the summary is retrieved shall be entered in the "date recvd" field on the PMBC screen. The claim and entry summary shall then be forwarded to the appropriate commodity team for processing.

5.5.3 If the entry summary is liquidated. The summary shall be retrieved and the date it is retrieved shall be entered in the "date recvd" field on the PMBC screen. The claim and entry summary shall be forwarded to the appropriate commodity team for processing.

5.5.4 Procedures to be followed for Electronic Invoice Processing (EIP) and EIP paperless. The procedures in the Protest/Petition Handbook shall be followed for EIP and EIP paperless entries.

5.5.5 Timeliness of a claim. Since the Automated Commercial System cannot currently verify the timeliness of a 520(d) claim (because it is based on the date of importation and not the date of entry) it is the responsibility of the Import Specialist to determine whether the claim was made within 1 year of the date of importation and is thus timely.

5.6 Suspension of a Claim. If an entry is the subject of a protest, petition or request for reliquidation relating to the good or a summons involving the good is filed in the Court of International Trade, the Entry/Protest Unit shall suspend action on the 520(d) claim until the protest, petition, or request is decided or judicial action on the summons is completed. The protest/petition number will be entered into the "lead protest f/r" field or the summons number entered into the "test summons" field and the claim suspended using function code PMAC. The claim should then be filed with the pending protest/petition or summons package.

5.7 Allowance of a Claim.

5.7.1 Unliquidated entry summary. If the Port Director decides to allow the claim and the entry summary is unliquidated, the Port Director shall liquidate the entry with a refund of duties and Merchandise Processing Fee (MPF). Interest paid will accrue from the date of receipt of the claim. (MPF is refunded in accordance with HQ 227605 and Customs Bulletin Vol. 32, No. 7, of February 18, 1998, pages 51-53.)

5.7.2 Liquidated entry summary. If the Port Director decides to allow the claim and the entry summary is liquidated, whether or not the liquidation has become final, the entry summary must be reliquidated in order to refund the duties and MPF. If the entry summary is to be reliquidated for other reasons (e.g., administrative review of a protest or petition for reliquidation or as a result of judicial review), refund of the duties and MPF shall be made at the time of such reliquidation. Interest paid will accrue from the date of receipt of the claim.

5.7.3 Tracking and record of 520(d) claims. The decision to allow the claim must be entered into the protest module (PMAC) and a decision copy filed in the master file.

5.7.4 Information provided to Customs pursuant to 19 CFR 181.32(b)(4) or (5). If any information was provided to Customs pursuant to 19 CFR 181.32(b)(4) or (5), that information, together with notice of the allowance of the claim and the amount of duty refunded shall be sent to North Star Commercial, 4455 Genesee Street, P.O. Box 400, Buffalo, New York 14225. North Star Commercial will forward this information to the customs administration of the country from which the good was exported.

5.8 Denial of a Claim. The Port Director may deny the 520(d) claim if, the claim is not filed timely, i.e., not filed within 1 year from the date of importation, the importer has not complied with the requirements under 19 CFR 181.32(b), the Certificate of Origin submitted under 19 CFR 181.32(b)(3) cannot be accepted as valid (see 19 CFR 181.22(c)), and/or after an origin verification under 19 CFR 181.72(a), the Port Director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied or withheld under 19 CFR 181.72(d), 181.74(c) or 181.76(b). If a denial is based on a verification, a negative origin determination shall be issued to the appropriate parties in accordance with 19 CFR 181.75. Note: In instances where the Certificate of Origin (CO) is not signed and dated, or is otherwise defective on its face, it is not valid. Under such circumstances the Import Specialist shall notify the importer via a Customs Form 28 to submit a corrected copy of the CO or the claim for preferential tariff treatment will be denied. The importer must be given at least 5 working days from the date of mailing to submit a corrected CO.

5.8.1 If the Port Director determines that the 520(d) claim shall be denied and the entry summary is unliquidated. The Port Director shall deny the claim in connection with the liquidation of the entry summary. If the denial is based on a negative origin determination, the summary shall not be liquidated until after the effective date of the origin determination as established in accordance with 19 CFR 181.76.

5.8.2 If the Port Director determines that the claim shall be denied and the entry summary is liquidated. Whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry summary is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the 520(d) claim. If the denial is based on a negative origin determination, the entry summary is not to be

liquidated any earlier than 30 calendar days from the date on which (1) the exporter or producer confirms receipt of the written determination or (2) the written determination is sent by Customs in accordance with 19 CFR 181.76(b)(1)(i) and (ii).

5.8.3 Recordation of a denied claim. The decision to deny the claim must be entered into the protest module (PMAC), the negative origin determination entered in the NSCOM database and a decision copy filed in the master file. (Note: The denial of a 520(d) claim can be the proper subject of a protest (see 19 CFR 174.12(e)(2).)

5.9 Corrected Claims. If after making a claim for preferential tariff treatment for an originating good the importer has reason to believe that a Certificate of Origin on which the claim was based contains incorrect information, the importer shall make a corrected declaration and pay any duties that may be due. Corrected claims must be made within 30 calendar days from the date on which the importer knew or had reason to believe that the information contained in the Certificate was incorrect. The corrected declaration shall include:

5.9.1 Payment of all applicable duties and fees;

5.9.2 The entry number(s) and date(s);

5.9.3 An amended written declaration as to whether or not the good qualified as an originating good at the time of importation; and

5.9.4 The nature of the incorrect information. No civil or administrative penalties will result provided the corrected claim is made before the commencement of an investigation as currently defined in 19 CFR 162.74.

5.10 Electronically filed post-importation NAFTA claims. Importers who opt to file their post-importation NAFTA claims electronically are still required to submit to Customs the documentation set forth in 19 CFR 181.32(b) (also see 5.2 of this directive).

Assistant Commissioner
Office of Field Operations