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SUBJECT: Claims under the North American Free Trade Agreement Tariff Preference Levels Program

1 PURPOSE. The following are guidelines for brokers, importers, and U.S. Customs and Border Protection personnel in filing and processing claims under the North American Free Trade Agreement Tariff Preference Levels (NAFTA TPL) Program. This program is for textile and wearing apparel products imported from Canada and Mexico.

2 POLICY.

2.1 Non-originating textile and apparel goods may qualify for preferential tariff treatment under the NAFTA TPL Program.

2.2 NAFTA TPL claims must be submitted in a complete and timely manner to ensure proper administration and accurate quota reporting.

3 AUTHORITIES/REFERENCES. NAFTA, Appendix 6.B to Annex 300-B; Additional U.S. notes 3 through 6 to Section XI of the HTS; Section XI, Statistical Note 5 of the HTS; 19 C.F.R Part 12.132(b); Customs Directive 3230-044, Quota and Duty Refund Requests: TPLs/TRQs; Customs Directive 3230-037A, Quota Class Merchandise: Processing and Reporting; Reasonable Care (A Checklist for Compliance), dated January of 1998.

4 ABBREVIATIONS and ACRONYMS. Automated Broker Interface (ABI), Automated Commercial System (ACS), U.S. Customs and Border Protection (CBP), Certificate of Eligibility (CE), Code of Federal Regulations (CFR), Customs Form (CF), Department of Foreign Affairs and International Trade (DFAIT), Harmonized Tariff Schedule of the United States (HTS), Kilograms (kgs), North American Free Trade Agreement (NAFTA), Quota Book Transmittal (QBT), Square Meter Equivalent (SME), Tariff Preference Levels (TPL), United States Code (U.S.C.).

5 RESPONSIBILITIES. The Assistant Commissioner, Office of Field Operations; Executive Director, Trade Compliance and Facilitation; Directors, Field Operations; Port Directors; and Assistant Port Directors will ensure these procedures are followed.

6 PROCEDURES.

6.1 Background. Annex 300-B, Appendix 6.B. of the NAFTA created TPLs for textile and wearing apparel products assembled in Canada and Mexico from non-NAFTA originating material. The TPL provisions are provided for in Additional U.S. Notes 3 through 6 and Statistical Note 5 to Section XI of the HTS. The TPLs allow entry at the NAFTA preferential rate of duty for a specific quantity as identified in Section XI of the HTS. Once that quantity for the TPL is reached, the product is dutiable at the Column 1 - General rate of duty. A CE is required to make a TPL claim. All goods that are claimed under the TPL must be reported to and accepted by the quota module in ACS. All goods entered under the NAFTA TPL Program are subject to merchandise processing fees.

6.2 CEs – General Information.

6.2.1 The CE issued by Canada or Mexico, for textile and apparel goods subject to the TPL, must be reviewed by CBP for accuracy of the elements identified under subsections 6.3.2 and 6.4.2. If an entry is found to have an unacceptable CE prior to entry summary acceptance and quota input, the entry will be returned back to the filer. The filer can submit a new CE or enter the merchandise at the Column 1 – General rate of duty. Please note that a new date and time of presentation will be established when the entry summary package that includes the new certificate is submitted.

6.2.2 If the CE is unacceptable, CBP will not return the original document, but will provide a certified copy for use in obtaining a new CE from Canada or Mexico. The original document should be retained at the port by the commodity team, and the replacement CE should be reviewed by an import specialist when the entry summary is presented. Goods may be entered even if a new CE is not supplied; however, the entry summary will be rate advanced to the Column 1 - General rate of duty.

6.3 Canadian CEs.

6.3.1 Only the DFAIT, Import and Export Controls, Textiles and Clothing Section issues CEs for TPL qualifying goods exported from Canada. The public should address inquiries concerning the CE to the Manager, Policy Unit, Origin and Valuation Policy Division, Customs Branch, Canada Customs and Revenue Agency, Ottawa, Ontario K1A 0L5, telephone (613) 954-6860 or fax (613) 954-5500.

6.3.2 A properly completed CE from Canada as required by 19 C.F.R. 12.132(b) must include the following:

1. **Format.** The CE presented at time of the claim must be an original form to be printed on plain white bond paper. It will no longer have a unique form number. No facsimile or photocopy will be accepted.
2. **CE Number.** The CE number appears in the block entitled “permit number.” The first character on the CE must be numeric and match the year of entry (date of the entry summary) on the CF 7501. The rest of the number includes the

International Organization for Standardization (ISO) country code (CA for Canada) and a unique 8-digit number. For example, a CE number will appear as follows on the CE: 2CA12345678. The CE number must be reported via ABI by removing the first two digits on the CE following the country code. For example, CE number 2CA12345678 would be reported in ABI as 2CA345678.

3. **Complete description of the goods.** The description provided on the CE in the block entitled "Description" must match the actual merchandise that is being entered. Where the description provided on the CE does not clearly identify the imported merchandise or allow for the proper reporting of the TPL (9999 statistical reporting number) for which the CE was issued, the CE is unacceptable.
4. **HTS subheading.** The CE must show a 6-digit HTS subheading in the block entitled "Commodity Code." The 6-digit HTS subheading must match the HTS number reported on the CF 7501.
5. **Quantity reporting.** The quantity reported on the CE must be stated in SMEs for fabric, apparel, and similar articles; and in KGS for yarn. This quantity and unit of measure should appear in the NAFTA 300B columns. The actual unit of measure for garments is also to appear as NMB (Number) in the "Unit Measure" column, with the quantity reported in the "QTY" column. The CE must cover goods invoiced and claimed under the TPL.
6. **Applicant and Exporter.** The applicant is the party in Canada electronically submitting a completed CE to the Government of Canada for approval and signature. The party identified as the exporter may be the actual manufacturer, or simply an exporter.
7. **Name and address of the consignee in the United States.** The name and address of the consignee in the United States must appear in the space entitled "Supplier/Consignee," or be attached.
8. **Authorized signatures.** A CE application must be properly completed by an applicant and submitted to the Department of Foreign Affairs and International Trade (DFAIT). If approved, a DFAIT official's signature, on behalf of the Minister of Foreign Affairs, will be embedded onto the bottom left portion of the CE. The approved form will then be printed by the Department and forwarded to the applicant, or the Department can forward the CE electronically and the applicant or broker may print it. The approved CE must be presented to CBP at the time a preference claim is made. Furthermore, the applicant/exporter/manufacturer must also sign the CE for it to be considered complete. This should be an original, versus a scanned/embedded signature.
9. **Origin of Materials.** The block entitled "country of origin" will reflect "FIN:CA" (finished:Canada), to indicate the origin of the imported good as Canada. The abbreviation "RAW: 3C" (raw material third country) or "RAW: 3CCA" (raw materials and fabric third country), indicates that textile materials originated in a third country. The textile declaration filed with the entry should be in sufficient detail to indicate the origin(s) of the materials and the processing performed in Canada.

6.4 Mexican CEs.

6.4.1 Effective December 1, 2000, only the Secretaria de Economia is authorized to issue CEs for TPL qualifying goods exported from Mexico. Prior to such date, CEs were issued by the Secretaria de Comercio y Fomento Industrial (SECOFI). Public inquiries concerning the CE should be addressed to Secretaria de Economia, Alfonso Reye No. 30, Colonia Condesa, Mexico D.F., C.P. 06140 Mexico, telephone 011.52.555.729.9100.

6.4.2 A properly completed CE from Mexico as required by 19 CFR 12.132(b) must include the following:

1. **Color.** The CE presented at time of the claim must be the original “blue” form. No facsimile or photocopy will be accepted.
2. **CE Number.** The CE number must appear in the block entitled “certificate number.” The first character of the certificate number must be numeric and match the year of export on the CF 7501. The rest of the number includes the ISO country code (MX for Mexico) and the actual 6-digit certificate number. The entire CE number must be reported through ABI, e.g., 2MX123456.
3. **Exporter name and address.** The exporter name and address must appear in block 3 entitled “Exporter.”
4. **Importer name and address.** The name and address of the U.S. importer must appear in block 4 entitled “Importer.”
5. **HTS subheading.** The CE must show a 6-digit HTS subheading in block 6 entitled “HS Tariff Classification.” This 6-digit HTS subheading must match the correct HTS on the CF 7501.
6. **Complete description of the goods(s).** The description provided on the CE in block 7 entitled “description of the good” must match the actual merchandise being entered. Where the description provided on the CE does not clearly identify the imported merchandise or allow for the proper reporting of the TPL (9999 statistical reporting number) for which the CE was issued, the CE will be unacceptable.
7. **Textile Category.** The CE must show the appropriate U.S. textile category in block 8 entitled “U.S. Category.” The textile category number is the 3-digit number that appears in parentheses after the article description.
8. **Quantity reporting.** The quantity reported in the CE should match the quantity as stated in the HTS, i.e., for fabric SMEs, for most apparel dozens, and in kilograms for yarn. The CE must cover goods invoiced and claimed under the TPL.
9. **Authorized signatures.** A CE must be properly completed and signed by a Mexican government official and presented to CBP by the importer or his agent at the time the claim for preferential treatment is made. Block 12 contains the printed name of the Mexican government official and block 13 the authorized signature of the official. In no instance will a CE be accepted without a signature.

6.5 Canadian TPL goods.

6.5.1 The TPLs have been established for apparel goods classified in Chapter 61 and 62 that are both cut (or knit to shape) and sewn or otherwise assembled in the territory of a NAFTA party from fabric or yarn produced or obtained outside the territory of one of the NAFTA parties. Apparel goods are intended to include all those products shown in Chapters 61 and 62, including some items such as scarves and headbands that have traditionally been considered by CBP to be accessories.

6.5.2 The TPLs have been established for cotton or man-made fiber fabric and cotton or man-made fiber made-up textile articles classified in Chapters 52-55 (excluding goods containing 36 percent or more by weight of wool or fine animal hair), 58, 60, and 63 that are knit or woven in the territory of a NAFTA party from non-originating yarns or knit in the territory of a NAFTA party from yarns spun in the territory of a NAFTA party from non-originating fibers.

6.5.3 The TPLs have also been established for textile articles classified in HTS number 9404.90 that are finished and cut and sewn or otherwise assembled from non-originating fabrics of subheadings 5208.11-5208.29, 5209.11-5209.29, 5210.11-5210.29, 5211.11-5211.29, 5212.11, 5212.12, 5212.21, 5212.22, 5407.41, 5407.51, 5407.71, 5407.81, 5407.91, 5408.21, 5408.31, 5512.11, 5512.21, 5512.91, 5513.11-5513.19, 5514.11-5514.19, 5516.11, 5516.21, 5516.31, 5516.41 or 5516.91.

6.5.4 For textile articles that are not qualifying because certain non-originating textile materials do not undergo the applicable change in tariff classification as set out in the NAFTA, but where such materials are 50 percent or less by weight of the materials of that textile article, only 50 percent of the SME is to be charged to the TPL. If over 50 percent, then 100 percent of the SME will be charged. The ACS quota module has been programmed to report only 50 percent of an amount when the 9999.00.55 TPL statistical reporting number is shown. The importing community will continue to report the full quantity on the CF 7501.

6.5.5 The TPLs have been established for cotton and man-made fiber yarns of headings 5205-5207 or 5509-5511 that are spun in the territory of a NAFTA party from non-originating fibers of headings 5201-5203 or 5501-5507.

6.6 Mexican TPL Goods.

6.6.1 The TPLs have been established for apparel goods classified in Chapters 61 and 62 that are both cut (or knit to shape) and sewn or otherwise assembled in the territory of a NAFTA party from fabric or yarn produced or obtained outside the territory of one of the NAFTA parties. Apparel goods are intended to include all those products shown in Chapters 61 and 62, including some items such as scarves and headbands that have traditionally been considered by CBP to be accessories.

6.6.2 The TPLs have been established for textile and apparel goods in Chapters 61, 62, and 63 that are sewn or otherwise assembled in Mexico under HTS subheading

9802.00. This provision is for foreign fabric cut in the United States and exported to Mexico for assembly. If this TPL fills for HTS number 9802.00.8055, merchandise must then be entered under HTS number 9802.00.8068.

6.6.3 If the TPL under section 6.6.2 fills, apparel goods of Chapter 61 and 62 should be reported to the TPL of section 6.6.1 above by using either the 9999.00.60 or 9999.00.61 TPL statistical reporting number in the first tariff field and the appropriate Chapter 61 or 62 number in the second tariff field through the ACS quota module. Textile goods of Chapter 63 should be reported to the TPL of section 6.6.4 below by utilizing the 9999.00.62 TPL statistical reporting number in the first tariff field and the appropriate Chapter 63 number in the second tariff field through the ACS quota module. Entries must be filed non-ABI to claim the three HTS numbers on one line.

6.6.4 The TPLs have been established for cotton or man-made fiber fabric and cotton or man-made fiber made-up textile articles classified in Chapters 52-55 (excluding goods containing 36 percent or more by weight of wool or fine animal hair), Chapters 58, 60, and 63 that are woven in the territory of a NAFTA party from non-originating yarns or knit in the territory of a NAFTA party from yarns spun in the territory of a NAFTA party from non-originating fiber. The TPLs have also been established for textile articles classified in HTS subheading 9404.90 that are finished and cut and sewn or otherwise assembled from non-originating fabrics under HTS subheadings 5208.11-5208.29, 5209.11-5209.29, 5210.11-5210.29, 5211.11-5211.29, 5212.11, 5212.12, 5212.21, 5212.22, 5407.41, 5407.51, 5407.71, 5407.81, 5407.91, 5408.21, 5408.31, 5512.11, 5512.21, 5512.91, 5513.11-5513.19, 5514.11-5514.19, 5516.11, 5516.21, 5516.31, 5516.41 or 5516.91.

6.6.5 The TPLs have been established for cotton and man-made fiber yarns of headings 5205-5207 or 5509-5511 that are spun in the territory of a NAFTA party from non-originating fibers of headings 5201-5203 or 5501-5507.

6.6.6 The TPLs cannot be used for the following products that are produced in Mexico and, therefore, must be entered under the Column 1 – General rate of duty:

- a) Apparel goods in Chapters 61 and 62 classifiable as of blue denim fabric of 200 grams per square meter or more classified under HTS subheadings 5209.42, 5211.42, 5212.24.60 and of blue denim fabric of 170 grams per square meter or more under HTS subheading 5514.32.00;
- b) Apparel goods in Chapters 61 and 62 classifiable as of woven oxford fabric of an average yarn number less than 135 metric number provided for in HTS subheadings 5208.19, 5208.29, 5208.39, 5208.49, 5208.59, 5210.19, 5210.29, 5210.39, 5210.49, 5210.59, 5512.11, 5512.19, 5513.13, 5513.23, 5513.33 and 5513.43;
- c) Men's or boy's underwear and briefs of cotton and man-made fiber under HTS subheadings 6107.11.00, 6107.12.00, and t-shirts, singlets, tank tops and similar apparel under HTS subheadings 6109.10.00 and 6109.90 composed chiefly of circular knit fabrics of a yarn number equal to or less than 100 metric number;

- d) Man-made fiber sweaters under subheading 6110.30 and goods under HTS subheading 6110.30 that are classified as parts of ensembles under HTS subheadings 6103.23 or 6104.23.

6.7 Presentation and Reporting of Quota for TPL Claims.

6.7.1 Canadian and Mexican TPL goods must be entered in accordance with 19 CFR 132. Entry type code 02 must be used when filing an entry summary for TPL claims. Block 30 of the CF 7501 must reflect the 10-digit HTS number and the 9999 TPL statistical reporting number. Value information should be associated with the appropriate Chapter 1-97 HTS number or split between the appropriate Chapter 1-97 HTS number and any applicable Chapter 98 HTS number. Under no circumstances should the value be shown with the 9999 TPL statistical reporting number. There are instances when merchandise subject to a TPL requires three tariff numbers to determine the applicable duty rate. However, the ACS quota module does not currently have the capability to process more than two tariff numbers per line when transmitted via ABI. Entries requiring three tariff numbers must be filed non-ABI.

6.7.2 The fact that a given product qualifies for a TPL does not exempt that product from quota/visa requirements. Currently, quota/visa requirements for categories 410, 433, 443, and 611 apply to TPL eligible articles from Mexico. These quota/visa requirements are scheduled to expire on January 1, 2004.

6.7.3 When merchandise is subject to a Mexico TPL and an absolute quota covering one of the visa categories above, a visa stamp and a CE must both be presented with the entry/entry summary. Both the visa number and the CE must be reported in the quota module prior to release of the merchandise. When reporting the quota in ACS, the visa number must be reflected in the visa field and the CE number reflected in the certificate field.

6.7.4 Merchandise that qualifies for a TPL must be input into the quota module within 6 hours after the entry summary or entry/entry summary is presented.

6.7.5 If the quota has been processed prior to rejecting the entry summary, it must be deleted from the quota module before placing the entry summary in reject status. Please note that a new date/time of presentation is established upon resubmission of the entry summary. The initial date/time of presentation is no longer valid.

6.8 Post-Entry TPL Claims.

6.8.1 Until such time as the filing of post-entry TPL claims may be addressed in the regulations, if an importer does not claim TPL upon initially filing the entry summary, a post-entry claim for TPL treatment may be filed using post-entry procedures for unliquidated entries. Entries that have not reached final liquidation are subject to 19 U.S.C. 1514 claims. The 19 U.S.C. 1514 also provides for the finality of liquidation for entries not protested within 90 days of liquidation; therefore, a claim for NAFTA TPL on

entries finally liquidated will not be considered.

6.8.2 The following are guidelines for post-entry TPL claims:

1. The TPL goods are not NAFTA originating and cannot be the subject of a claim under 19 U.S.C. 1520(d).
2. Importers or their agents may avail themselves of post-entry procedures in order to claim TPL treatment provided the quota has not filled for the applicable quota period.
3. In order to be a valid post-entry claim, the CE must accompany the claim.
4. The date the post-entry claim is received by CBP establishes the date/time of presentation for quota processing. Quota-class merchandise subject to a post-entry claim must be reported in the ACS quota module within 6 hours of receipt. This should be done prior to retrieving the entry and routing the post-entry claim for review and approval. If it is later determined that the merchandise does not qualify for TPL benefits, the quota must be deleted.
5. The following procedures should be followed when the post-entry claim is filed in the same quota period in which the merchandise is released:
 - a) The quota must be reported in the ACS quota module.
 - b) If the quota is filled, the port must contact Headquarters Quota Enforcement and Administration Branch (HQ Quota) to confirm the date and time the quota filled.
 - i) If the quota filled prior to the receipt of the post-entry claim, the TPL claim must be denied.
 - ii) If the quota filled after receipt of the post-entry claim, the claim must be approved and the quota record opened by HQ Quota for processing.
6. If a post-entry claim is received in a different quota period than the quota period in which the merchandise was released, the port must contact HQ Quota for assistance in processing the quota.
7. Each port will be responsible for establishing procedures that require the filer to identify post-entry TPL claims in order to expedite the processing. In addition to identifying the post-entry claim the filer must also provide a copy of the revised CF 7501 annotated with the statement "FOR QUOTA PURPOSES ONLY" with the post-entry claim. The revised copy of the CF 7501 will be used for quota input purposes only. Once the entry is retrieved, this copy can be maintained with the post-entry claim or discarded.
8. The HQ Quota can be contacted through E-mail at the address HQ Quota, or by calling (202) 927-5850.
9. Before any refunds are allowed, the entry must be processed through the ACS Quota Module and receive an "Accepted" status message.

6.9 Reasonable Care

6.9.1 For a more thorough coverage of this topic, importers are encouraged to familiarize themselves with the document entitled Reasonable Care (A Checklist for Compliance), published in January 1998. In this section, a few questions have been

listed specific to NAFTA TPL, which may assist the importing community in exercising “reasonable care” and complying with Customs laws and regulations. The list of questions is illustrative but not exhaustive.

6.9.2 In keeping with the Modernization Act’s theme of “informed compliance,” and “reasonable care,” CBP recommends that the importing community claiming NAFTA TPL review and be cognizant of information contained in the following list of questions prior to making a NAFTA TPL claim:

1. Has the importer verified/visited the producer to confirm that all cutting and assembly was done in a NAFTA country?
2. Has the importer ascertained that the company’s production capability supports the number of TPL claims?
3. Have quotas for the imported merchandise closed or are they nearing closing for this country?
4. What is the history of this manufacturer/producer regarding this commodity?

6.9.3 CBP personnel must be mindful that post-entry TPL claims are not always valid or appropriate and must be cognizant of quota status, liquidation status, requests for extension and the timeliness of claims before approving such requests. The filing of false post-entry TPL claims may indicate a lack of reasonable care, and may result in the issuance of a penalty.

6.9.4 Requests for extension of liquidation in order to make a post-entry TPL claim will not automatically be granted and may be denied if it is determined reasonable care was not exercised.

6.10 Enforcement of Noncompliant TPL Claims.

6.10.1 Post-entry TPL claims that are received by CBP after the final liquidation of the entry will not be accepted. Requests for extension of liquidation in order to make a post-entry TPL claim will not automatically be granted and may be denied if it is determined reasonable care was not exercised.

6.10.2 While the importing community may avail themselves of standard post-entry procedures for filing a post-entry TPL claim on unliquidated entries or entries that have not reached final liquidation via procedures set forth in 19 U.S.C. 1514, the filing of false post-entry TPL claims may indicate a lack of reasonable care and may result in the issuance of a penalty.

6.10.3 Noncompliant or false TPL claims may be subject to penalties within the purview of either recordkeeping requirements set forth in 19 U.S.C. 1509 (19 CFR 163.6), or negligence, gross negligence, or fraud within the purview of 19 U.S.C. 1592 (19 CFR 181.81 and 181.82).

Assistant Commissioner
Office of Field Operations