U.S.-Chile Free Trade Agreement Implementation Information
January 29, 2004

Background

The U.S.-Chile Free Trade Agreement Implementation Act ("the Act"; Public Law 108-77; 117 Stat. 909; 19 U.S.C. 3805 note) was signed into law on September 3, 2003. The Act allowed for the Agreement to take effect on or after January 1, 2004, with the actual implementation date to be determined by the President. Sections 201 and 202 of the Act authorize the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to Chilean goods provided for in the Agreement. The Act has been posted to the U.S. Trade Representative's website.

Presidential Proclamation 7746, dated December 30, 2003 and published in the Federal Register on December 31, 2003, implemented the U.S.-Chile Free Trade Agreement (US-CFTA) for goods entered, or withdrawn, from warehouse for consumption on or after January 1, 2004. The Proclamation incorporated by reference Publication 3652 of the United States International Trade Commission (USITC). Annex 1 of Publication 3652 amends the Harmonized Tariff Schedule (HTS) by adding a new General Note 26 containing specific information regarding the US-CFTA and a new Subchapter XI to Chapter 99 to provide for temporary tariff rate quotas (TRQs) implemented by the US-CFTA. Annex II of Publication 3652 amends the HTS to provide for immediate and staged tariff reductions. Publication 3652 has been posted to the USITC website.

The US-CFTA provides for the elimination of the merchandise processing fee (MPF), and the immediate or staged elimination of duties and barriers to bilateral trade in goods and services originating in the United States and/or Chile.

This document provides instructions on the filing and acceptance of claims for preferential tariff treatment made under the US-CFTA.

Title 19, Code of Federal Regulations (CFR) is being amended to implement the Agreement and the Act. This memorandum outlines U.S. Customs and Border Protection's (CBP) procedures in advance of the issuance of regulations and thus these instructions are subject to change once the regulations are issued.

US-CFTA General Rules of Origin

Section 202 of the US-CFTA Implementation Act specifies the general rules of origin to be used in determining if a good qualifies for preferential tariff treatment under the Agreement. The HTS has been amended to include General Note 26, which contains specific rules of origin, definitions and other provisions to determine whether a good originates under the US-CFTA.

The methodology to determine whether a good qualifies for preferential tariff treatment is similar but not identical to that found in the North American Free Trade Agreement (NAFTA). A notable difference in the US-CFTA is that the responsibility for providing information to substantiate the claim is on the importer, rather than the exporter.

Generally, under the US-CFTA, a non-textile good is originating where:

a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties (Chile, the U.S. or both);

b) The good is produced entirely in the territory of one or both of the Parties and

    1. Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n); or

    2. The good otherwise satisfies any applicable RVC or other requirements specified in the General Note 26(n), and all other applicable requirements are met; or

c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

The US-CFTA contains a de minimis provision of 10 percent, which applies to most goods, except those specifically enumerated in General Note 26. This provision also is inapplicable to textile articles, which have their own de minimis rule provided for in General Note 26(d)(i). Under the de minimis rule, a good that contains materials that do not undergo a required change in tariff classification (tariff shift) as specified in General Note 26, may still qualify as originating if the value of all non-originating materials, used in the production of the good, that do not undergo the required change in classification does not exceed 10% of the adjusted value of the good. This provision applies provided that the value of such non-originating materials will be included in the total value of non-originating materials for any applicable RVC requirement.

A list of exceptions to the de minimis rule of origin may be found in General Note 26(e)(ii) of the HTS.

A good which has undergone simple combining or packaging operations or mere dilution with water or other substances will not be considered originating. In addition, goods that undergo further production outside the territory of Chile or the U.S., other than unloading, reloading or other processes that preserve the condition of the good, will not be considered originating.

US-CFTA Qualifying for Textiles and Apparel

Textiles and apparel products may qualify as originating under US-CFTA if they meet the requirements as specified in the Agreement. The duty rate for these goods will be identified in the “special” column. Although there are differences, these requirements are similar to the NAFTA.

Below is a summary of the type of processes required for some of the more basic products in order for them to be considered eligible for US-CFTA. There are exceptions even to these requirements, depending on the specific type of product it is. For more specific information refer to Annex I of the Modification to the HTS to implement US-CFTA, USITC Publication 3652.

a) Yarn – generally, fiber must originate in Chile or U.S. in order to qualify for preferential tariff treatment.

b) Fabric – generally, yarn must originate in Chile or U.S. to qualify for preferential tariff treatment. Cotton and man-made knit fabric are under fiber forward rules.

c) Apparel – generally, yarn must originate in Chile or U.S. in order to qualify for preferential tariff treatment.

US-CFTA Qualifying Based on a Tariff Preference Level (TPL)
A TPL has been established for certain fabric goods of cotton and man-made fibers provided for in Chapters 52, 54, 55, 58 and 60 of the HTS.

In Chapters 52, 54 and 55 the TPL covers woven fabrics (Headings 5208 to 5212; 5407 and 5408; 5512 to 5516). These goods must be wholly formed in Chile from yarn produced or obtained outside the territories of the Parties.

For Chapters 58 and 60, these goods must be wholly formed in Chile from fibers or yarn produced or obtained outside the territories of the Parties. The following HTS numbers in Chapters 58 and 60 would apply:

(Annex 4.1 Section D – Cotton and Man-made Fiber Goods of Chapters 58 and 60)

5801.21	5801.22	5801.23	5801.24
5801.25	5801.26	5801.31	5801.32
5801.33	5801.34	5801.35	5801.36
5802.11	5802.19	5802.20.0020	5802.30.0030
5803.10	5803.90.30	5804.10.10	5804.21
5804.29.10	5804.30.0020	5805.00.30	5805.00.4010
5806.10.10	5806.10.24	5806.10.28	5806.20
5806.31	5806.32	5807.10.05	5807.10.2010
5807.10.2020	5807.90.05	5807.90.2010	5807.90.2020
5808.10.40	5808.10.70	5808.90.0010	5809.00
5810.10	5810.91	5810.92	5811.00.20
5811.00.30			
6001.10	6001.21	6001.22	6001.91
6001.92	6002.40	6002.90	6003.20
6003.30	6003.40	6004.10	6004.90
6005.21	6005.22	6005.23	6005.24
6005.31	6005.32	6005.33	6005.34

6005.41	6005.42	6005.43	6005.44
6006.21	6006.22	6006.23	6006.24
6006.31	6006.32	6006.33	6006.34
6006.41	6006.42	6006.43	6006.44

For more information refer to U.S. Note 22, Subchapter XI of Chapter 99 (Annex I of the USITC publication number 3652).

In addition, a TPL was established for certain apparel of cotton and man made fibers. This TPL requires that the apparel must be both cut (or knit to shape) and sewn or otherwise assembled in Chile from fabric or yarn produced or obtained outside the territory of one of the Parties.

For more information refer to U.S. Note 23, Subchapter XI of Chapter 99 (Annex I of the USITC publication number 3652).

A statement of eligibility is required whenever a TPL claim is made. At the time of entry the importer must submit a statement certifying and containing information demonstrating that the goods are eligible for the TPL. The TPLs are covered by HTS numbers 9911.99.20 and 9911.99.40. For additional information please review QBT-2003-064, QBT-2003-065, and QBT-2003-066 dated December 31, 2003.

For TPL goods, the Special Program Indicator (SPI) “CL” must be placed in front of the heading 9911 HTS number when the entry is filed. In addition to the 9911 number, the appropriate Chapter 1-97 number must be identified on the CBP Form 7501.

If a good does not qualify as originating under US-CFTA or under the established TPLs, but it is still considered to be a product of Chile, then the normal trade relations rate under column 1 would apply.

Quota
The applicability and implementation of quota issues under US-CFTA are addressed under separate instructions.

Eligible Articles (Non-Textile and Textile) / Immediate and Staged Reductions
The list of HTS item numbers that are eligible for immediate duty free treatment, as well as those subject to staged tariff rate reductions, can be found in Annex II of USITC Publication 3652.

Information Necessary to Make a Claim
A claim for preferential tariff treatment may be filed at the time of entry summary by placing the symbol “CL” as a prefix to the HTS subheading for each good or line item for which treatment is being claimed.

Certification Requirements

The US-CFTA provides that "…an importer may satisfy a request under Article 4.12(1)(b) by providing a certificate of origin that sets forth a valid basis for a claim that a good is originating. Each Party shall provide that a certificate of origin need not be in a prescribed format, and that the certificate may be submitted electronically."

All references to a "certificate of origin" in this document, do not refer to an "official form" issued by CBP, such as the CF434 under the NAFTA. A certificate of origin may take many forms, such as a statement on company letterhead, a statement on a commercial invoice or supporting documentation which demonstrates that the imported good qualifies for preferential treatment. Any format utilized must contain the data elements outlined in Attachment A.

At the request of CBP the importer shall submit a certificate of origin or supporting documentation to demonstrate that the imported goods qualify for preferential tariff treatment. The certification is not required to be on file at the time the claim is made. However, the importer is responsible for retaining supporting documentation, which may be requested by CBP, as to the good's eligibility for preferential treatment at the time the claim was made. The certificate of origin shall be submitted in English or Spanish. If submitted in Spanish, CBP may request an English translation.

An importer may submit a certificate of origin completed or generated by an exporter or producer or may issue the certificate of origin based on information submitted by the exporter or producer that the good qualifies as originating; however, the importer must exercise reasonable care when certifying to the accuracy and truthfulness of the information submitted to CBP. The fact that the importer has issued a certificate of origin based on information provided by the exporter or producer or submits a certificate of origin executed by the exporter or producer shall not relieve the importer of the responsibility to exercise reasonable care.

The importer may file a certificate of origin for a single entry or a blanket certificate of origin for multiple shipments of identical goods. A single entry certificate of origin is for a single importation and may be valid for one or more originating goods. A blanket certificate of origin is for multiple importations over a period not to exceed 12 months and may be valid for one or more originating goods.

A certification shall not be required for an importation of goods with an F.O.B. value of $2,500 or less unless CBP considers the importation to be carried out or planned for the purposes of evading U.S. laws and regulations. Moreover, if CBP conducts a verification to determine if the goods are in compliance with other CBP laws and/or regulations, CBP may require the importer to furnish a valid certificate of origin regardless of the monetary value of the good.

Importers are required to maintain records in the United States for five years after the date of importation, including the certification, if completed, and all records relating to the importation of the good.

Verification by CBP

The US-CFTA places the burden of substantiating the validity of the claim for preferential tariff treatment on the importer. An importer may make a claim based on knowledge or information in his/her possession that the good qualifies as an originating good. CBP may verify the validity of the claim and will direct inquiries for verification via a CBP Form 28, Request for Information, to the importer.

Furthermore, when requested by CBP, the importer shall provide additional documentation above and beyond the certification such as additional cost and manufacturing information. Such information may include information concerning the RVC calculation used in the claim for preference such as the build up or build down methods as outlined in General Note 26, HTS. This includes, but is not limited to, records concerning the purchase of, cost of, value of and payment for the good and the purchase of, cost of, value of and payment for all materials used in the production of the good, and the production of the good in its exported form.

In addition, the importer may provide relevant information from the exporter or producer of the good. In many instances, the exporter may be unwilling to provide cost and/or sourcing information to the importer. CBP will still work through the importer. The importer is expected to arrange for the foreign supplier to provide information directly to CBP.

The US-CFTA provides flexibility by not mandating the certificate of origin be in a prescribed format (such as the NAFTA Certificate of Origin) and by permitting where feasible, the statement to be submitted to Customs electronically.

Examples of actions that CBP may take when verifying a claim:

1. Since the US-CFTA is an “importer-focused” agreement, a CBP Form 28 should be issued to the importer first. If the requested information is not in the importer’s possession, the importer may have the exporter or producer provide it directly to CBP.

2. If the importer is unsuccessful either in obtaining the documentation from the exporter or producer or in obtaining cooperation in providing CBP with the documentation, CBP may issue a CBP Form 28 directly to an exporter or producer in Chile.

3. Conduct a joint visit (CBP and Chile Customs together), if consent is given, to the exporter or producer’s premises for textiles and apparel only.

Determination of a Claim

If the importer forwards the certificate of origin and/or any other records or documentation demonstrating that the goods qualify for preferential tariff treatment, CBP will notify the importer of the positive determination via a CBP Form 29, Notice of Action, stating that the goods qualify as originating. The CBP Form 29 will include the HTS number, description of the good and the relevant rule of origin applied to the good.

If the importer fails to submit a certificate of origin or any relevant information, CBP will issue a negative determination via a "Proposed" CBP Form 29. The notice shall specify why the goods do not qualify for preferential tariff treatment and notify the importer that they have 20 days from the date of the notice to provide the certificate of origin and/or any related documentation to CBP. The proposed CBP Form 29 will cite the appropriate statutes and/or regulations and detail the rate and/or value advance where appropriate. If the importer fails to comply with the proposed CBP Form 29 within 20 days of the date of the notice, a CBP Form 29 "Action Taken" negative determination will be issued to the importer.

If the importer provides a certificate of origin and/or any other documentation, and CBP determines, based on the information submitted, that the goods do not qualify for preferential tariff treatment, a negative determination will be sent to the importer in the form of a CBP Form 29. The notice will specify why the goods do not originate pursuant to the US-CFTA rules of origin, cite the appropriate statutes and/or regulations and detail the rate and/or value advance where appropriate.

If claims were made for preferential tariff treatment based on a blanket certificate of origin against which a negative determination was established, CBP shall deny preferential tariff treatment to all importations of identical merchandise covered by that blanket certificate of origin for all entries that have not reached final liquidation.

Where CBP determines through verification that an importer has certified more than once, falsely or without substantiation, that a good qualifies as originating, CBP may suspend preferential tariff treatment to identical goods imported by such person until that person proves to CBP satisfaction that the goods comply with the applicable rules and regulations and qualify for preferential treatment under this agreement.

If CBP determines that a certificate of origin or supporting documentation containing the data elements is illegible, defective or has not been completed in accordance with the requirements, the importer shall be granted no less than five working days to submit a corrected certificate of origin. Failure to provide a corrected certificate of origin shall result in denial of the claim.

Correction of US-CFTA Claims

An importer is required to promptly make a corrected declaration if the importer has reason to believe the declaration was based on incorrect information. The importer is

required to submit corrections and pay any additional duties and MPF within 30 days from the date the error was discovered.

Penalties will not be assessed for voluntarily declaring that imported goods were not originating according to the rules of origin, provided the importer complies with the requirements set forth in 19 CFR 162.74.

Post-Importation Claims

The US-CFTA permits importers to make post-importation claims for preferential tariff treatment. The importer may make a claim no later than one year after the date of importation. The importer shall submit a claim in writing to the port where the goods were entered. The post-importation claim must include:

1) A written declaration stating that the good qualified as an originating good at the time of importation and the number and date of the entry or entries covering the good;
2) A copy of a certificate of origin or supporting documentation containing the required data elements of Attachment A demonstrating that the goods qualified as originating on the day of importation;
3) A statement indicating whether the entry summary or equivalent documentation was provided to any other person;
4) A statement indicating whether the importer is aware of a claim or refund relating to the good; and
5) A statement indicating whether a protest, petition or request for reliquidation has been filed relating to the good and identification of such filing(s).

If CBP determines that a certification or supporting documentation containing the required data elements is illegible, defective or has not been completed in accordance with the requirements, the importer shall be granted no less than five working days to submit a corrected certification. Failure to provide a corrected certification shall result in denial of the post-importation claim.

In addition, CBP shall deny a claim that was not filed timely, or that was based on an invalid certificate of origin. A claim can also be denied following an origin verification if CBP makes a negative determination based on findings discovered during the verification.

Protest Rights

In addition to post-importation refund claims cited above, importers or other interested parties may avail themselves of post entry administrative and judicial procedures.

Specifically, importers or other interested parties may file a protest to contest a negative origin determination pursuant to 19 U.S.C 1514 within 90 days of the date of liquidation. The protest may enable the importer to receive a refund of duties and/or MPF for eligible goods entered, or withdrawn from warehouse, for consumption.

Merchandise Processing Fees (MPF) and Harbor Maintenance Fees (HMF)
In addition to the reduced and free rates of duty afforded by the US-CFTA, goods that qualify for preferential tariff treatment are not subject MPF. Textile merchandise entered under TPL numbers 9911.99.20 and 991.99.40 will still be subject to MPF.

In addition, no merchandise is exempt from the harbor maintenance fee.

Termination of the Agreement
There is no set expiration date for the US-CFTA. However, the provisions of and amendments made by the Act will cease to be effective upon the termination of the Agreement by written notification from either the U.S. or Chile. The US-CFTA will expire six months after the date of the notification.

Loss of GSP Benefits
Chile lost its GSP eligibility with the implementation of the US-CFTA.

Action
On or after January 1, 2004, importers and brokers may file claims for preferential tariff treatment on qualifying goods that originate in Chile. These claims shall be made at the time the entry summary is filed by placing on the document the Special Program Indicator (SPI) “CL” as a prefix to the HTS item number for each line on which preferential tariff treatment is claimed.

Currently, program updates to the Automated Commercial System (ACS) which allow for automated processing have not been completed. Therefore, until further notice from this office, importers claiming preference under the US-CFTA must file entries non-ABI. Importers will have the option to file ABI entries at release and follow through with manual entry summaries. This option is allowed only for Chile claims and will terminate once ACS programming to allow electronic filing is complete.