Singapore Free Trade Agreement Implementation Information
January 30, 2004

Background

The U.S.-Singapore Free Trade Agreement Implementation Act ("the Act"; Public Law 108-78; 117 Stat. 948; 19 U.S.C. 3805 note) was signed 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 goods of Singapore provided for under the Agreement. The Act can be found on-line at the U.S. Trade Representative (USTR) website.

Presidential Proclamation 7747, dated December 30, 2003 and published in the Federal Register on December 31, 2003, implemented the U.S.-Singapore Free Trade Agreement (US-SFTA) for goods entered or withdrawn from warehouse for consumption on or after January 1, 2004. The Proclamation incorporated, by reference, Publication 3651 of the United States International Trade Commission (USITC). Annex 1 of Publication 3651 of the USITC, amends the Harmonized Tariff Schedule (HTS) by adding a new General Note 25 containing specific information regarding the US-SFTA and a new Subchapter X to Chapter 99 to provide for temporary tariff rate quotas (TRQs) implemented by the US-SFTA.

Annex II of Publication 3651 amends the HTS to provide for immediate and staged tariff reductions. Publication 3651 has been posted to the USITC's website.

The Agreement provides for the immediate or staged elimination of duties and barriers to bilateral trade in goods and services originating in the United States and/or Singapore.

This memorandum provides instruction on the filing and acceptance of claims for preferential treatment of goods made under the US-SFTA.

US-SFTA General Rules of Origin

Section 202 of the US-SFTA 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 25, which contains Rules of Origin, definitions and other provisions to determine whether a good originates under the US-SFTA.

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-SFTA is that the responsibility is on the

importer, rather than the exporter, to demonstrate that a good qualifies for preferential tariff treatment.

Generally, under the US-SFTA, a non-textile good shall qualify for preferential tariff treatment as a “product of Singapore” if:

a. The good is wholly obtained or produced entirely in Singapore, the U.S. or both;

b. Each non-originating material used in the production of the good imported from Singapore:

   (1) Undergoes an applicable change in tariff classification (tariff shift) specified in General Note 25(o) as a result of production occurring entirely in Singapore, the United States or both; or

   (2) The good otherwise satisfies applicable regional value content or other requirements specified in General Note 25(o); or

c. The good, as imported, is enumerated in General Note 25(m) [see Integrated Sourcing Initiative below] and is imported from Singapore.

The US-SFTA contains a de minimis provision of 10%, which applies to most goods, except for textile articles and other goods which are specifically enumerated. Under the de minimis rule provided for in GN25 (d)(i), a good that contains materials that do not undergo a required change in tariff classification (tariff shift) specified in the rules of origin, may receive preferential tariff treatment if the value of all non-originating materials that do not undergo the required change in classification used to produce the good does not exceed 10% of adjusted value of the good. This provision applies, provided that the value of such non-originating materials shall be included in the total value of non-originating materials for any applicable regional value content requirement.

A list of exceptions to the de minimis rule of origin may be found in General Note 25(e)(ii).

A good, which has undergone simple combining or packaging operations or mere dilution with water or other substances, shall not be considered originating.

Integrated Sourcing Initiative (ISI)

Article 3.2(1) of the US-SFTA, provides that specific goods may be considered originating goods for purposes of the Agreement when shipped between the U.S. and Singapore, regardless of whether they satisfy the applicable rule of origin. The specific list of ISI eligible goods is limited to information technology and medical products and can be found in General Note 25(m).

In order for ISI eligible goods to receive preferential tariff treatment under US-SFTA, the good must be shipped from a non-Free Trade Agreement (FTA) country (countries other than Singapore and the United States) to the territory of Singapore, then shipped directly to the United States for importation. ISI eligible goods that meet the criterion of being shipped from the territory of Singapore to the U.S. will not be required to satisfy the specific rules of origin; however, they will be treated upon importation as originating goods.

Singapore must be the country of export for ISI eligible goods to receive benefits under US-SFTA; however, the country of origin of the good may be any country.

For purposes of ISI eligible goods receiving preferential treatment, the territory of Singapore is defined as its land territory, internal waters and territorial sea plus certain maritime zones.

The goods must still be marked with the true country of origin, despite receiving originating status under US-SFTA.

A product on the ISI list that is shipped from a non-FTA country and used as input for the manufacture of a non-ISI final product (such as a machine tool) in Singapore does not count as an originating material for purposes of a regional value content (RVC) calculation. The only way that the ISI material, component, product, or other input would affect an RVC calculation would be if an ISI product from a non-FTA party were first shipped from Singapore to the United States, is held in the U.S. without undergoing any processing that would affect its treatment under the rules of origin, is shipped to Singapore, and then manufactured there into a non-ISI good and imported into the U.S.

If the above shipping requirements are met, the material or component may be considered originating for purposes of satisfying a regional value content (RVC) requirement upon its return to the U.S.

Please refer to Attachment B, a Trade Facts sheet distributed by the USTR on July 21, 2003 for examples of how ISI products will be treated. In that document, please note the third bullet under “How The ISI Works” for the requirement that must be met for the value of the ISI eligible materials or components to be used in the calculation of regional value content (RVC) as an originating cost.

US-SFTA Qualifying for Textiles and Apparel

Textiles and apparel products may qualify as originating goods under US-SFTA if they meet the requirements as specified in the Agreement. The duty rate for this merchandise 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 to be considered eligible for US-SFTA. There are exceptions even to these requirements, depending on the specific type of product. For more specific information, refer to publication 3651, which can be found at the USITC website.

a) Yarn – generally, fiber must originate in Singapore or U.S., in order to qualify for USSFTA treatment.

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

c) Apparel – generally, yarn must originate in Singapore or U.S., in order to qualify for US-SFTA treatment.

US-SFTA Qualifying Based on Tariff Preference Levels (TPL)

TPLs have been established for certain apparel products, of cotton and man-made fibers to allow entry under a reduced duty rate up to a specific quantity of goods that are not originating goods. These goods are both cut (or knit to shape) and sewn or otherwise assembled in Singapore from fabric or yarn produced or obtained outside the territory of one of the Parties. Once that quantity is reached, the product is dutiable at the column 1 rate and the merchandise processing fee (MPF) is due. For more information refer to U.S. Note 13, Subchapter X of Chapter 99.

A valid preferential Certificate of Origin/Eligibility (Certificate) is required whenever a TPL claim is made. This Certificate must be an original and must be filed with the entry documents. This Certificate will contain a stamp by the Director General of Singaporean Customs in box 12 of the form. The certificate will also contain a number in a standard visa format (i.e. 4SG123456) that must be reflected in column 34 of the CBP Form 7501. For additional information see note QBT-2003-062 and 2003-063 dated December 30, 2003.

For TPL goods, the Special Program Indicator (SPI) “SG” must be placed in front of the chapter 9910 HTS number when the entry is filed. In addition to the 9910 number, the appropriate Chapter 1-97 number must be shown. The applicable rates of duty are located in Annex II (C) of USITC publication number 3651.

Non-Qualifying Textiles

If a good does not qualify as originating under US-SFTA or under the established TPLs, but it is still considered a product of Singapore, then the normal column 1 rate would apply and MPF is due.

Quota

Goods of Singapore are not subject to quota.

Eligible Articles (Non-Textile and Textile) / Immediate and Staged Reductions The list of HTS item numbers that are eligible for immediate duty free treatment can be found in Annex II of Publication 3651. Annex II of Publication 3651 has been posted to the USITC website.

Tariff rates for a variety of US-SFTA eligible goods are currently higher than the Column 1 rate. An "s" in parentheses is annotated next to the US-SFTA duty rate in the Harmonized Tariff Schedule to indicate "suspended". In accordance with General Note 3 of the HTS, the normal trade relation (NTR) column 1 rate of duty will apply for those goods without regard to whether a claim for preference has been made. The staged tariff reductions for all other goods can also be found in Annex II of Publication 3651.

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 "SG" as a prefix to the HTS subheading for each good or line item for which treatment is being claimed.

In addition, at the request of Customs and Border Protection (CBP), the importer must submit a statement as outlined in Attachment A, or supporting documentation containing the required data elements of Attachment A, to demonstrate that the imported goods qualify for preferential tariff treatment. The statement need not be in a required format and may submitted electronically.

Importers are required to maintain for five years after the date of importation, all records relating to the importation of the good. These include, but are not limited to, records concerning the purchase of, cost of, value of and payment for the good, 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.

Verification by Customs
The US-SFTA 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.

The importer will substantiate a claim by submitting a statement or supporting documentation containing the required data elements of Attachment A specifying how the good qualifies as an originating good and shall include additional requested documentation above and beyond the statement 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 outlined in General Note 25 of the HTS.

In addition, the importer shall 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 their foreign supplier to provide information directly to CBP.

The US-SFTA provides flexibility by not mandating the statement to be in a prescribed format, however, it must contain the data elements and certification as outlined in Attachment A. Upon CBP's issuance of the CBP Form 28 the importer shall provide the statement and any requested documentation to CBP no later than 30 days from the date of the request. The statement can be submitted to CBP electronically.

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

1. Since the US-SFTA 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 Singapore.

3. Conduct a joint visit (CBP and Singapore 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 a statement and any records and information necessary to demonstrate that the goods imported 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 statement or any relevant information, CBP will issue a negative determination via a proposed CBP Form 29, Notice of Action. 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 statement 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 negative determination will be sent to the importer in the form of a CBP Form 29, Notice of Action Taken.

If the importer provides a statement and/or supporting 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, Notice of Action Taken. The notice will specify why the goods do not originate pursuant to the US-SFTA rules of origin, cite the appropriate statutes and/or regulations and detail the rate and/or value advance where appropriate.

Claims for preferential tariff treatment may be based on a statement that pertains to a single shipment or a blanket statement covering shipments for a period of up to 12 months. Where a negative determination is made with respect to a blanket statement, CBP shall deny preferential tariff treatment to all importations of identical merchandise covered by that blanket statement 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's satisfaction that these goods comply with the applicable rules and regulations and qualify for preferential treatment under this agreement.

Corrected US-SFTA Claims

An importer is required to promptly make a corrected declaration if the importer is aware that the claim is not valid. Penalties will not be assessed if the importer voluntarily declares that imported goods were not originating according to the rules of origin, corrects the claim and pays any duty and MPF owed. Pursuant to Article 3.14:4(b) of the Agreement, the importer will not be subject to any penalty if the claim is corrected and any duty and MPF owed is paid at least one year from submission of the invalid claim.

Petition and Protest Rights

Post-Importation Claims

Importers may make a post-importation to contest a denial of preference claim in accordance with the Post Entry Amendment (PEA) test program. http://www.cbp.gov/trade/entry-summary/post-entry-amendment or the Post-Summary Correction test program, http://www.cbp.gov/trade/entry-summary/port-summary-correction.

Protest Rights

Importers may file a protest to contest a denial of preference or other adverse action by CBP pursuant to 19 U.S.C. 1514 within 180 days of the date of liquidation or other adverse action by CBP.

Merchandise Processing Fees and Harbor Maintenance Fee

In addition to the reduced and free rates of duty afforded by the US-SFTA, goods that qualify for preferential tariff treatment are not subject to merchandise processing fees.

Textile merchandise entered under TPL numbers 9910 will still be subject to merchandise processing fees.

In addition, merchandise is not exempt from the harbor maintenance fee.

Termination of the Agreement

There is no set expiration date for the US-SFTA. 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 Singapore. The US-SFTA will expire six months after the date of the notification.

Action

Effective January 1, 2004, importers and brokers may file claims for preferential tariff treatment on qualifying goods that originate in Singapore. These claims shall be made at the time the entry summary is filed by placing on the CBP Form 7501 the Special Program Indicator (SPI) “SG” as a prefix to the HTS item number for each line on which preferential tariff treatment is claimed.