



U.S. Customs and
Border Protection

March 22, 2012

ENT-14 OT:TPP:TAPP:TO NM

MEMORANDUM FOR: Directors, Field Operations
Office of Field Operations

FROM: Director, Textile/Apparel Policy and Programs
Office of International Trade *John P. Jernard*

SUBJECT: TBT-12-003 Supplemental Instructions for Document
Review When Verifying Trade Preference Program Claims
for Textiles and Wearing Apparel

REFERENCE: TBT-11-004 Additional Documents Used to Verify Free
Trade Agreement and Legislated Trade Program Claims for
Textiles and Wearing Apparel

TBT-07-019 Documents Used to Verify Free Trade
Agreement and Legislated Trade Program Claims for
Textiles and Wearing Apparel

BACKGROUND:

TBT-07-019 and TBT-11-004, referenced above, provide guidance to U.S. Customs and Border Protection (CBP) personnel and the trade regarding examples of the documentation CBP considers in reviewing claims for the preferential tariff treatment of textiles and wearing apparel entered into the United States under various trade preference programs. Because CBP is aware of inconsistencies in the understanding of the application of these TBTs, which are not law, but guidance, the Textile/Apparel Policy and Programs Division (T/APP) is issuing an additional policy on the submission and review of documentation that attempts to substantiate claims that goods meet the requirements of the rules of origin for free trade agreements (FTA) and legislated trade preference programs.

In issuing additional policy guidelines, T/APP notes that these guidelines are not exhaustive nor are they to be interpreted so rigidly as to preclude a reasonable approach to providing and reviewing supporting documentation. The trade is to exercise reasonable care in the preparation of trade preference claims and subsequent responses to Requests for Information and should provide CBP personnel with documents that support claims for preferential treatment even if the CBP Form 28 does not specify the document type.

Based on inquiries into port practices, importer comments, and recent protest decisions, T/APP puts forth the following guidelines.

With the exception of the NAFTA Certificate of Origin, the format of a statement of origin certification or of an affidavit of origin is unspecified, as long as the content meets the requirements outlined by the specific trade preference program and TBT-07-019 and TBT-11-004.

When a correlation of information on various documents presented to support a claim is not immediately apparent, importers should supplement the documents with an explanation describing the relationship of the companies manufacturing, selling, and supplying materials for the production of a good. A list identifying the documents, possibly by numbering them, and showing how they are connected to one another would facilitate their review.

If a document covers more materials, such as fabrics, than were used in the production of the goods in question, an accompanying note should identify the materials that are relevant to the shipment under review.

In the case of omissions caused by oversight or of inaccurate language translations, import specialists should seek clarification or additional information that could be supportive of a claim.

When an affidavit, whether or not a blanket affidavit, does not provide all of the details to confirm the validity of a claim, the importer should also supply supporting documents, such as, but not limited to, purchase orders, invoices, and proofs of payment.

The denial of a claim based solely on the absence of a document CBP did not request is not appropriate. However, if the Request for Information clearly stated the supporting information necessary to verify the claim, and it was not provided in any format, denial of the claim is appropriate.

The use of language in an affidavit stating a material “will be sold” or is “to be sold” is ambiguous because the affidavit applies to the instant shipment and, therefore, at the time of entry, the word “sold” is appropriate. While CBP prefers affidavits indicate the date when the merchandise is sold, if a blanket affidavit employing ambiguous language is presented, CBP expects it to be accompanied by records demonstrating when the sale of the materials took place.

Although the expectation is that affidavits will be signed, if an affidavit does not bear a signature, the import specialist should, at his discretion, call the authorized official named on the affidavit to confirm its validity.

Affidavits need not be original documents, but ports may contact the issuers to confirm their validity.

While an affidavit commonly appears on letterhead, the use of a company's letterhead is not required. A letterhead's implication that the company produces merchandise other than that which it produced for the instant shipment does not preclude use of that letterhead.

This guidance does not limit the types of requests the ports may make of importers nor does it preclude them from requiring types of documentation that are not mentioned in this memorandum.

A port's contacting an importer for an explanation of unclear documentation can serve to prevent unnecessary protests as well as to educate an importer and deter the establishment of a pattern of conduct in the submission of deficient documentation.

T/APP notes that some importers submit carelessly prepared documents and must not rely on CBP to repeatedly request clarification and corrections.

ACTION:

Port personnel are to apply these guidelines to the process of verifying claims for preferential tariff treatment based on free trade agreements and legislated trade programs.

This memorandum is for the use of port directors, assistant port directors, import specialists, CBP officers, entry specialists, brokers, importers, and other interested parties.

INFORMATION:

For additional information, please contact International Trade Specialist Ms. Diane Liberta at 202-863-6241, Import Specialist Ms. Nancy Mondich at 202-863-6524, or Textile Policy Branch Chief Ms. Jacqueline Sprungle at 202-863-6517 in the Office of International Trade.

cc: Assistant Directors, Trade, Field Operations
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