April 26, 2006

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| MEMORANDUM FOR: | DIRECTORS, FIELD OPERATIONS |
| FROM: | Executive Director, Trade Enforcement and Facilitation<br>Office of Field Operations |
| SUBJECT: | Amendments to the U.S. - Dominican Republic - Central America Free Trade Agreement Implementation Instructions |

*This memorandum supercedes the original distribution of the U.S. – Dominican Republic – Central America Free Trade Agreement Implementation Instructions dated March 3, 2006. Please disregard the original and replace with the current information below. This memorandum updates the sections entitled "Retroactive Claims" and "Quota".*

**Background**

The U.S.-Dominican Republic-Central America Free Trade Agreement Implementation Act ("the Act"; Public Law 109-53; 119 Stat. 462; 19 U.S.C. 4001 note) was signed into law on August 2, 2005. The Act allowed for the Agreement to take effect upon determination by the President for those countries that have taken measures to comply with the requirements of the Agreement. Sections 201, 202 and 203 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 provided for in the Agreement. The Act has been posted to the U.S. Trade Representative's website at the following URL:

http://ustr.gov

Presidential Proclamation 7987, dated February 28, 2006 and published in the Federal Register on March 2, 2006, implemented the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) for goods entered, or withdrawn, from warehouse for consumption on or after March 1, 2006. The Proclamation incorporated by reference Publication 3829 of the United States International Trade Commission (USITC). Annex I of Publication 3829 amends the Harmonized Tariff Schedule (HTS) by adding a new General Note 29 (GN29) containing specific information regarding the CAFTA-DR and a new Subchapter XV to Chapter 99 to provide for temporary tariff rate quotas (TRQs) and tariff preference levels (TPL) implemented by the CAFTA-DR. In addition, new provisions have been added to Subchapter XXII to Chapter 98. Annex II of Publication 3829 amends the HTS to provide for immediate and staged tariff reductions. Publication 3829 has been posted to the USITC's website at the following URL:

http://usitc.gov

The CAFTA-DR is a multilateral agreement between the U.S. and Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Dominican Republic. Presidential Proclamation 7987 implemented the Agreement for the country of El Salvador effective March 1, 2006. Presidential Proclamation 7996, dated March 31 implemented the Agreement for Honduras and Nicaragua for goods entered, or withdrawn from warehouse for consumption, on or after April 1, 2006. Therefore, for purposes of these instructions, reference to a CAFTA-DR country is the U.S., El Salvador, Honduras, and Nicaragua.

This memorandum provides instructions on the filing and acceptance of claims for preferential tariff treatment made under the CAFTA-DR.

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 (CBP) procedures in advance of the issuance of regulations and thus these instructions are subject to change once the regulations are issued.

**CAFTA-DR General Rules of Origin**

Section 203 of the CAFTA-DR 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 GN29, which contains specific rules of origin, definitions and other provisions to determine whether a good originates under the CAFTA-DR.

The CAFTA-DR employs a similar methodology to determine whether a good qualifies for preferential tariff treatment that is found in previous agreements such as the U.S.-Chile and Australia Free Trade Agreements. Another notable similarity is that the responsibility for providing information to substantiate the claim is on the importer.

Generally, under the CAFTA-DR, a non-textile good is originating where:

a) The good is wholly obtained or produced entirely in the territory of one or more of the Parties (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic or the U.S.);[1]

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

   (i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in GN29(n); or

[1] Upon issuance of this memorandum, the U.S., El Salvador, Honduras, and Nicaragua are the only countries that have implemented the agreement and are eligible to receive benefits.

(ii) The good otherwise satisfies any applicable regional value content (RVC) specified in GN29(n); and

the good satisfies all other applicable requirements; or

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

The CAFTA-DR contains a de minimis provision of 10 percent, which applies to most goods, except those specifically enumerated in GN29. This provision also is inapplicable to textile articles, which have their own de minimis rule provided for in GN29(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 GN29(n), 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. The de minimis 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 provision may be found in GN29(e)(ii) of the HTS.

Goods that undergo further production outside the territory of a Party or the U.S., other than unloading, reloading or other processes that preserve the condition of the good, or goods that do not stay under customs control will not be considered originating.

**Regional Value Content (RVC) Calculation Methods**

For most goods, the Agreement provides for two methods for calculating RVC: (1) the build-up method, based on the value of originating materials; and (2) the build-down method, based on the value of non-originating materials. However, the RVC for certain automotive goods may be calculated using the net cost method. This is limited to the following automotive goods:

| HTS | General Description |
|---|---|
| 8407.31 through 8407.34 | Engines |
| 8408.20 | Diesel Engines for Vehicles |
| 8409 | Parts of Engines |
| 8701 through 8708 | Motor Vehicles, Chassis, Bodies and Parts |

**Information Necessary to Make a Claim**

Preferential tariff treatment may be received for imported goods of a CAFTA-DR country that are eligible as an originating good or a “qualifying” good (see definition below). Although the same rules found in GN29(n) apply to determine whether a good is

originating or qualifying there is a distinction between those eligible goods and the indicator for making a claim.

A claim for preferential tariff treatment may be filed at the time of entry summary by placing the Special Program Indicator (SPI) “P” or “P+” as a prefix to the HTS subheading for each good or line item for which treatment is being claimed. A good that is originating by meeting the rule of origin set forth in GN29 may receive preferential duty treatment by using the SPI “P”. A good that is qualifying may receive a preferential rate of duty by using the SPI “P+” along with the appropriate chapter 98 or 99 HTS number.

An originating good is one that meets the general and/or product specific rules of origin set forth in GN29(b) or (n). An originating good must be more than a product of a country. But it must meet the rules of origin of the Agreement in order to receive benefits.

“Qualifying” goods are certain agricultural goods, such as beef, dairy products and sugar that are subject to quantitative restrictions as found in chapter 98 or 99 of the HTS. A “qualifying” good is one that meets the product specific rule of origin found in GN29(n), however U.S. materials or inputs are considered to be of a non-Party. Therefore, in determining whether a good meets a specific rule of origin, U.S. materials are considered non-originating.

**Certification or Other Information Requirements**

The importer may make a claim for preferential tariff treatment based on a written or electronic certification issued by the importer, exporter or producer, or importer’s knowledge to include reasonable reliance on information in the importer’s possession that the good qualifies as an originating good according to the rules of origin. The importer must be prepared to submit upon CBP’s request the certification or other information setting forth the reasons that the good qualifies as originating. The certification or other information 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.

If the certification serves as the basis for the claim, it does not need to be in a prescribed format, may be submitted electronically and may cover a single shipment or multiple shipments of identical goods not to exceed the time period of 12 months. The certification must not only include the reason the good qualifies as originating, but must contain the required data elements pertaining to the importation of the good, as outlined in Attachment A. The certification may be submitted in English or Spanish. If submitted in Spanish, CBP may request an English translation.

An importer may submit a certification completed or generated by an exporter or producer or may issue the certification 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 certification based on information provided by the exporter or producer or submits a certification executed by the exporter or producer does not relieve the importer of the responsibility to exercise reasonable care.

If the basis for the claim is not a certification but rather is supported by other information, that information must also include the required data elements outlined in Attachment A, but does not need to include the certifying statement or the blanket period. However, the information must sufficiently support the claim for preference.

A certification or other information 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 U.S. laws and/or regulations, CBP may require the importer to furnish a valid certification regardless of the monetary value of the good.

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

**CAFTA-DR Eligibility for Textiles and Apparel**

Textiles and apparel products may qualify as originating under CAFTA-DR if they meet the requirements as specified in the Agreement. The duty rate for these goods will be identified in the “special” column. These requirements are similar to the North American Free Trade Agreement (NAFTA), but there are some substantial differences.

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 CAFTA-DR. 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 CAFTA-DR, USITC Publication 3829 or GN29 to the HTS. It should be noted that for apparel in Chapters 61 & 62 and made-up textile articles in Chapter 63 only the component that determines the essential character for classification must meet the tariff shift rules. It should also be noted that regional sewing thread (U.S. or CAFTA-DR beneficiary) must be used for all articles in Chapters 61-63 in order to qualify for CAFTA-DR.

a) Yarn – generally, fiber must originate in a CAFTA-DR beneficiary country or the U.S. to qualify for preferential tariff treatment.

b) Fabric – generally, yarn must originate in a CAFTA-DR beneficiary country or the U.S. to qualify for preferential tariff treatment. Cotton and man-made knit fabric are

under fiber forward rules, meaning the fiber must originate in a CAFTA-DR beneficiary country or the U.S. to qualify for preferential treatment.

c) Apparel – generally, yarn must originate in a CAFTA-DR beneficiary country or the U.S. to qualify for preferential tariff treatment.

Note: There are a number of single transformation rules for luggage, cotton and man made fiber woven dresses other than corduroy, boxer shorts, brassieres and boys' and girls' woven pajamas and nightwear that exist, so one should become familiar with the tariff shift rule found in GN29(n) for that particular product that you are importing before a CAFTA-DR claim is made.

**Other Textile and Apparel Goods of CAFTA-DR**

If a good does not qualify as originating under CAFTA-DR or under the established Tariff Preference Levels (TPLs), but it is still considered to be a product of a CAFTA-DR country, then the Normal Trade Relations (NTR) rate under Column 1 would apply.

**De Minimis (Textiles)**

A textile or wearing apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex I or GN29, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component.

**Elastomeric Yarns**

Notwithstanding the preceding paragraph regarding de minimis, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party (see GN29(e)).

**Certain Nylon Filament Yarn**

Textile or apparel goods may also contain in the component that determines the classification of the good specified nylon filament yarn (other than elastomeric yarn described above) from Israel, Canada or Mexico. The nylon filament yarn is classified in HTS numbers:

5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5403.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00 or 5402.61.00 (See GN29(d)(i)(B)).

**Visible Linings**

Fabric used for visible linings in certain apparel, such as suits, coats and skirts must be formed and finished in a CAFTA-DR beneficiary country.

**Narrow Elastomeric Fabric of Subheadings 5806.20 or 6002**

Despite the fact that only the component that determines the classification of the good must meet the tariff shift rule, if apparel contains a narrow elastomeric fabric of subheadings 5806.20 or 6002, such fabric must be formed and finished in a CAFTA-DR beneficiary country (see Rule 3 of Chapters 61 & 62 found in GN29(n)).

**U.S. Fabric Cut in a CAFTA-DR Beneficiary Country**

There is a special provision for goods of Chapter 61, 62 or 63 that are assembled from fabric wholly formed in the U.S. or components that are knit to shape in the U.S. that are cut in the U.S. or in a CAFTA-DR beneficiary country, or both, to pay the NTR rate of duty on only the value added in the CAFTA-DR beneficiary country. Sewing thread to assemble the good must by wholly formed in the U.S. to qualify for this provision (see GN29(d)(iv) and 9822.05.10).

**Short Supply**

Fibers, yarns or fabrics not available in commercial quantities in a timely manner among the Parties are listed in Chapter 98, subchapter XXII, U.S. Note 20. Importers making a short supply claim must use HTS number 9822.05.01. Importers are cautioned to check any updates on the Office of Textile and Apparel (OTEXA) website for the status of short supply claims at the following URL:

www.otexa.ita.doc.gov

**Handloomed, Handmade and Folklore Goods**

Folklore agreements must be negotiated with each of the CAFTA-DR beneficiary countries before goods may be eligible for this provision. Once a country has negotiated a folklore agreement, goods can be entered under HTS number 9822.05.25 in addition to their Chapter 1-97 number. To date, no country is eligible for this provision and a Textile Book Transmittal (TBT) will be issued when a country becomes eligible.

**Retroactive Claims**

Interim regulations for the retroactive claims for textile and apparel goods have been published in a Federal Register dated March 7, 2006 (71 FR 11304) and can be found in 19 CFR 10.699 once regulations are updated. TBTs have been issued allowing El Salvador, Nicaragua, and Honduras to make retroactive claims. Please refer to TBTs

06-005 and 06-009 for those implementing instructions. Importers should be aware that the legislation requires a retroactive duty refund request to contain sufficient information to enable CBP to determine that the good qualifies for CAFTA-DR.

**CAFTA-DR Qualifying Based on a Tariff Preference Level (TPL)**

There is a TPL for cotton and man-made fiber apparel cut and sewn and otherwise assembled in Nicaragua. Merchandise entered under this TPL must use Chapter 9915.61.01. There is no retroactive treatment for goods entering under a TPL.

**Costa Rica Wool Apparel**

Costa Rica has a special provision for woven wool tailored apparel of headings 6203 or 6204 that is cut, sewn and otherwise assembled in Costa Rica. The goods must also meet, as applicable, the visible lining, narrow elastomeric fabric and sewing thread rules. However, Costa Rica is not yet a CAFTA-DR eligible country. Merchandise entered under this provision must use 9915.62.01 – 9915.62.20 and the duty rate for the merchandise entered under this provision is half of the (NTR) rate of duty up to specified annual quantities.

**Quota**

For CAFTA-DR goods subject to quantitative limits for agricultural products subject to a tariff-rate quota, the SPI "P+" (qualifying agricultural products) must be placed in front of the required 98 or 99 HTS number when the entry is filed. For textile products entered under HTS number 9915.61.01 (Nicaragua) and 9915.62.01 - 9915.62.20 (Costa Rica) no SPI is needed. In addition to the required 98 or 99 HTS number, the appropriate Chapter 1-97 HTS number must be identified on the CBP Form 7501 (see "Information Necessary to Make a Claim" for more information regarding originating and qualifying goods).

The application of tariff rate quotas for the CAFTA-DR will be addressed in separate instructions issued in the form of Quota Book Transmittals (QBTs) by the Headquarters Quota Branch. These instructions are available to CBP field officers as well as the importing community and include the quota period, procedures for quota openings, restraint limits, applicable HTS numbers, and any special processing instructions. These messages are available on the CBP website, www.cbp.gov, under the TEXTILES AND QUOTA section of the IMPORT page. In addition to QBTs, there is also a link to the Commodity Status Report. This weekly report lists the fill rates for the tariff rate quotas. The past four reports are maintained on the site.

**Treatment of Sets (Textile and Non-Textile)**

Notwithstanding the specific rules of origin set out in GN29, textile or apparel goods classified under General Rule of Interpretation 3 of the HTS as goods put up in sets for retail sale shall not be regarded as originating goods unless each of the goods in the set

is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the value of the set determined for purposes of assessing customs duties (see GN29(c)(v)).

Non-textile goods classified under General Rule of Interpretation 3 of the HTS as goods put up in sets for retail sale will be considered originating for purposes of receiving preferential tariff treatment only if each good in the set is originating per the specific rules of origin set forth in GN29 or the value of the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set.

**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 3829.

**Verification by CBP**

The CAFTA-DR 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 a certification or 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 records concerning the RVC calculation used in the claim for preference such as the build up or build down methods as outlined in GN29 of the 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 CAFTA-DR provides flexibility by not mandating the certification or other information be in a prescribed format (such as the NAFTA Certificate of Origin) and by permitting the certification to be submitted to CBP electronically where feasible.

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

1. Since the CAFTA-DR 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 the exporter or producer.

3. CBP may also conduct a verification visit, in accordance with procedures established by the Parties, to the exporter or producer's premises.

**Determination of a Verification**

If the importer forwards the certification 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 based on the information submitted 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 certification 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 certification and/or any related documentation to CBP. The proposed CBP Form 29 will cite the appropriate legal authority 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, or provides a certification 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 issued to the importer via the form of a CBP Form 29 "Action Taken". The notice will specify why the goods do not originate pursuant to the CAFTA-DR rules of origin, cite the appropriate legal authority 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 certification against which a negative determination was established, CBP shall deny preferential tariff treatment to all importations of identical merchandise covered by that blanket certification 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 the goods comply with the applicable rules and regulations and qualify for preferential treatment under the Agreement.

If CBP determines that a certification or other information 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 certification. Failure to provide a corrected certification shall result in denial of the claim.

**Correction of CAFTA-DR 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 merchandise processing fee (MPF) within 30 days from the date the error was discovered.

Penalties will not be assessed for promptly and 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 and did not engage in negligence, gross negligence, or fraud.

**Post-Importation Claims**

If a claim for preference was not made at the time of importation and the goods were originating, the CAFTA-DR permits importers to make post-importation claims for preferential tariff treatment and request a refund of excess duties and/or MPF. The importer may make a post-importation claim no later than one year after the date of importation and must comply with the requirements of 19 USC 1520(d). The importer shall submit a claim in writing to the port where the goods were entered which 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 certification 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 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 other information 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 or other information 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 certification, or other information. 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**

Importers or other interested parties may file a protest to contest a negative origin determination pursuant to 19 U.S.C 1514 within 180 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 CAFTA-DR, goods that qualify for preferential tariff treatment are not subject to MPF. Merchandise that qualifies for preferential treatment under a Trade Preference Level (TPL) will not be exempt from MPF. In addition, no merchandise is exempt from the harbor maintenance fee.

**Termination of the Agreement**

There is no set expiration date for the CAFTA-DR. 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 the U.S. or a CAFTA-DR country. The CAFTA-DR will expire six months after the date of the notification.

**Loss of GSP and CBI Benefits**

Upon implementation of the CAFTA-DR, goods of the CAFTA-DR countries will no longer be eligible to receive benefits under the Generalized System of Preferences (GSP) or the Caribbean Basin Initiative (CBI), which includes the loss of benefits under the Caribbean Basin Economic Recovery Act (CBERA) and the Caribbean Basin Trade Partnership Act (CBTPA). However, it is important to note that the CAFTA-DR amends provisions of the CBERA and CBTPA as indicated in the next section.

**Amendments to CBERA and CBTPA**

Section 402 of the Implementing Act amends Sections 212 and 213 of the CBERA by striking the CAFTA-DR countries from the list of beneficiary countries. The amendments define a “former beneficiary country” and a “former CBTPA beneficiary country” as those that are no longer eligible for CBERA/CBTPA benefits as a result of entering into a free trade agreement with the U.S. For purposes of the implementation of the CAFTA-DR, a former beneficiary country and a former CBTPA beneficiary country refer to the CAFTA-DR countries that have implemented the Agreement.

CAFTA-DR amends CBERA by allowing the cost or value of materials produced in the territory of the U.S. Virgin Islands, Puerto Rico, and "former beneficiary countries" to be counted towards meeting the 35 percent value added requirement. CBERA still allows for up to 15 percent be attributed to the cost or value of materials produced in the territory of the U.S. (other than the U.S. Virgin Islands and Puerto Rico).

Moreover, CAFTA-DR amends CBTPA by allowing the remaining CBTPA beneficiary countries to continue to use inputs of, or processing performed in, former CBTPA beneficiary countries in order for a good to be eligible for CBTPA benefits. The amendment provides that a "former CBTPA beneficiary country" will be considered a CBTPA beneficiary country for purposes of determining the eligibility for preferential treatment under CBTPA.

This amendment allows for inputs of, and processing in, current CAFTA-DR countries to count towards a good meeting the preference rules under CBTPA. However, in order for a good to receive preferential treatment under CBTPA, the origin conferring activity must occur in a current CBTPA beneficiary country.

Currently, the CBERA/CBTPA requires a good to be imported directly from a beneficiary country in order to receive CBTPA preferential treatment. Section 402 of the Implementing Act provides that a good will not be disqualified from CBTPA treatment because it is imported directly from a former CBTPA beneficiary country. Goods of current CBTPA beneficiary countries may be shipped from a current CAFTA-DR country and still claim preference under CBTPA.

The amendments also provide for a country of origin limitation in that if a good is a good of a former CBTPA beneficiary country under the non-preferential rules of origin found in 19 CFR 102 (marking rules), then the good is not eligible for CBTPA preferential treatment. An exception to this limitation is afforded to goods that are co-produced in Haiti and the Dominican Republic. Under this exception, a good may receive preferential treatment under CBTPA when origin-conferring activities, such as production, take place in the Dominican Republic so long as the good undergoes processing in Haiti. This exception will take effect when Dominican Republic implements the Agreement.

**Action**

On or after March 1, 2006, importers and brokers may file claims for preferential tariff treatment on goods that originate in El Salvador. On or after April 1, 2006, importers and brokers may file claims for preferential tariff treatment on goods that originate in Nicaragua and Honduras. These claims shall be made at the time the entry summary is filed by placing on the document the SPI 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 CAFTA-DR must file non-ABI entries. Importers will have the option to file ABI entries at release and follow through with manual entry summaries. This option is allowed only for CAFTA-DR claims and will terminate once ACS programming to allow electronic filing is complete.

Copies of this memorandum should be made available to Port Directors, Assistant Port Directors, Import and Entry Specialists, CBP Officers, Brokers, Importers and other interested parties.

Questions regarding the non-textile provisions of the CAFTA-DR should be directed to Lori Whitehurst, Trade Agreements Branch at (202) 344-2722.

Questions regarding textile and wearing apparel provisions under the CAFTA-DR, should be directed to Robert Abels, Textile Operations Branch at (202) 344-1959.

Questions regarding quota issues should be directed to Christine Kegley, Quota Branch at (202) 344-2319.

Vera Adams

Attachment

# ATTACHMENT A

## DATA ELEMENTS FOR THE CERTIFICATION OF ORIGIN OR SUPPORTING DOCUMENTATION MADE UNDER THE DOMINICAN REPUBLIC - CENTRAL AMERICA FREE TRADE AGREEMENT

**List of data elements:**

**1. Name and address of the importer:**
The legal name, address, telephone, and e-mail of the importer of record of the good.

**2. Name and address of the exporter:**
The legal name, address, telephone, and e-mail of the exporter of the good.
(If different from the producer).

**3. Name and address of the producer:**
The legal name, address, telephone and e-mail of the producer of the good.
(If known).

**4. Description of good:**
The description of a good shall be sufficiently detailed to relate it to the invoice and the Harmonized System (HS) nomenclature.

**5. HS tariff classification number:**
The HS tariff classification, to six or more digits, as specified for each good in the Rules of Origin.

**6. Preference criterion:**
The preference criterion applicable to each good as provided in the Rules of Origin.

**7. Single shipment:**
Provide the commercial invoice number.

**8. Multiple shipments of identical goods:**
Provide the blanket period in “mm/dd/yyyy to mm/dd/yyyy” format. (12-month maximum).

**9. Authorized signature, company, title, telephone, fax, e-mail, and certification date:**
The signee must have access to the underlying records and the legal authority to bind the company. This field shall include signature, company, title, telephone, fax, and e-mail.

**10. Certification:**

I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain, and present upon request, documentation necessary to support this certification, and to inform, in writing, all persons to whom the certificate was given of any changes that could affect the accuracy or validity of this certification;

The goods originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the United States-Dominican Republic-Central America Free Trade Agreement, there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This certification consists of _____ pages, including all attachments.