Simons & Wiskin

Trade Talk

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COUNTRY OF ORIGIN FOR TEXTILE ARTICLES UNDER CAFTA

A fireball of activity exploded in San José, Costa Rica and in Washington, D.C. during November and December of last year, culminating in a U.S. Trade Representative press release on December 17 announcing the US-Central American Free Trade Agreement ("CAFTA"). This flurry followed what had appeared - at least to the public eye - to be months of languishing and virtually no movement since President George W. Bush announced trade negotiations among the United States and five Central American nations, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. The draft text of the Agreement was made available on January 28, 2004.

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The Agreement requires approval by the U.S. Congress and the legislatures of the other signatory countries in order to take effect. We anticipate that, after the language of the Agreement has been settled, the final text will be proposed to Congress for both Houses to accept or reject.

In general terms, the Agreement seeks to eliminate tariffs and most other barriers to trade, to open markets, and to promote investment, economic growth and opportunity for all five countries but within the terms adopted by the parties. The tariff treatment of textile and apparel goods and the rules of origin applicable to these goods are important and significant elements of the Agreement. They determine whether such textile articles are entitled to the preferences or benefits bestowed by the terms of CAFTA when they are imported into the United States.

In addition to general rules of origin applicable to all imports, CAFTA contains specific rules of origin applicable to textile and apparel articles. Whether a textile article will be treated as a good or article "originating" in a CAFTA country (a signatory to the Agreement) is dependent upon how well the origin of the fabric and other textile materials used to make the product and the manufacturing operations meet the requirements of the CAFTA Rules of Origin for textile and apparel articles. The textile and apparel rules should be read in together with the CAFTA Rules of Origin with general application to all imports from CAFTA countries,

The textile and apparel Rules of Origin are applicable to goods described in Chapters 42, 50 through 63, 66, 70 and 94 of the Harmonized System (based upon the Harmonized Tariff Schedule of the United States (2002)). One set of rules govern textile articles described in Chapters 50 through 60 of the Harmonized System, which cover various textile materials, such as filaments, fibers, yarns, fabrics, waddings, felt, twine, rope, cordage, etc., made from a variety of materials, including silk, wool, cotton, man-made fibers and filaments, etc. Textile articles described in Chapters 50 through 60 will be considered as originating in a nation that is a "Party" to CAFTA if such textile article is "wholly formed" in one or more of the Party nations from (a) fibers and yarns included in a "Short Supply" list of fibers or yarns determined to be unavailable in commercial quantities in a timely manner in the territory of any Party, or (b) any combination of fibers and yarns included in the "Short Supply" and fibers and yarns originating in a Party nation under the Agreement. In this context, the term "wholly" means that the article is made entirely or solely of the named material.

Another set of rules govern textile and apparel articles described in Chapters 61 through 63 and 94 of the Harmonized System, which cover include articles of apparel and clothing accessories, other made up textile articles, needlecraft sets, and rags. These articles qualify as originating in the territory of a Party to CAFTA if the articles are cut and sewn or otherwise assembled in the territory of one or more CAFTA country or countries. The fabric of the outer shell, exclusive of the collars and cuffs, must be made wholly of one or more (or any combination) of fabrics on the "Short Supply" list, of fabric that is formed in a CAFTA country from yarns on the "Short Supply" list, or of fabrics originating in a CAFTA country whether or not they contain a specified minimum of non-originating yarns.

If a textile or apparel article to imported into the United States is not "wholly" produced in the territory of one or more Parties, the article may qualify, nevertheless, as a CAFTA product and receive CAFTA benefits. Generally, a textile and apparel article Manufactured or assembled in a CAFTA country from non-originating materials may be treated as an article "originating" in a CAFTA country, provided certain conditions are met. Certain manufacturing operations performed in one or more CAFTA countries that cause a shift in specified tariff classifications to other specified tariff classifications may qualify the product undergoing such a change in tariff classification to the benefits of CAFTA. However, quite often the requirements, in addition, direct that the cutting and sewing of the textile article must occur in a CAFTA country.

Ultimately, each case must be examined and tested to determine whether a specific imported article qualifies as a product entitled to the preferences that CAFTA confers.

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STATUS OF OTHER FREE TRADE AGREEMENTS

The Free Trade Agreements the United States has concluded with Singapore and Chile took effect on January 1, 2004. Other agreements and negotiations are pending. In early February, the United States announced the conclusion of a Free Trade Agreement with Australia. Negotiations are pending for an FTA with the five-member Southern African Customs Union and may be completed by this Spring. Other countries with which FTA negotiations are pending or actively being considered include Morocco, Bahrain, the Dominican Republic, Thailand, Panama, and the Andean Group (Colombia, Peru, Ecuador, and Bolivia).

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CUBAN CIGAR IMPORT PROHIBITIONS ARE STILL IN EFFECT

Since 1963, seven successive U.S. administrations have implemented and maintained a comprehensive program of economic sanctions against Cuba. These prohibitions apply to all goods of Cuban origin and make it illegal for U.S. persons to buy, sell, trade, or otherwise engage in transactions involving illegally-imported Cuban cigars.

Only persons who have been licensed for a trip to Cuba may import Cuban cigars upon their return, and the value of such cigars is limited to $100, must be for the individual's personal use and are may not be resold. Travelers to other countries, *e.g.*, England, Mexico or Canada, who purchase Cuban cigars may not legally bring them into the U.S. In addition to confiscation and forfeiture of the cigars, penalties for illegal importation of Cuban cigars include civil fines up to $55,000 per violation. Criminal prosecution is also a possibility.

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This newsletter is for informational purposes only and is not intended to set forth legal opinions. If the reader has any questions regarding the information contained herein, appropriate counsel should be consulted

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