

OFFICE OF INTERNATIONAL TRADE

TEXTILE AND QUOTA NEWSLETTER

JANUARY 2012

FIRST ISSUE TEXTILE/QUOTA NEWSLETTER TO BOTH CBP AND THE TRADE

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National sugar policy has been affected by statute since 1789 when the First Congress of the United States imposed a tariff upon foreign sugar. The purpose of this and subsequent tariffs was to provide revenue for the government. From 1789 to 1930, a total of 30 Acts dealing with sugar were passed, not including several modifications. In 1842, however, the purpose of the tariff was expanded to include a policy of protection by subjecting refined sugar to a higher tariff than raw sugar, thereby attempting the promotion of a domestic refining industry and the expansion of domestic raw sugar production. It was not until 1934 that a federal sugar program was enacted.

The History of U.S. Sugar Protection

Alvarez and Polopolus (1988).

Certificate Quota Eligibility (CQE)

The Harmonized Tariff Schedule of the United States (HTS) authorizes the Secretary of Agriculture to establish the quantity of raw cane sugar, which may be entered at the Tariff Rate Quota (TRQ) duty rates. The regulation, promulgated by the United States Trade Representative, provides for the issuance of CQEs by the Secretary of Agriculture, and in general prohibits sugar subject to the TRQ from being imported into the United States or withdrawn from a warehouse for consumption at the TRQ duty rates unless such sugar is accompanied by a CQE.

CQEs are issued to foreign countries by the Director of the Import Policies and Programs Division, Foreign Agriculture Service, or his or her designee.

CQEs permit exporters to ship raw cane sugar to the United States and usually receive a significantly higher price from the importer. Therefore, in contrast to most information collection documents, CQEs have a monetary value equivalent to the substantial profits for exporters who can fill their raw cane sugar allocations under the TRQ. CQEs have always been carefully handled as secure documents, and issued only to foreign government-approved certifying authorities.

Each certificate shall be numbered and identified by the foreign country. The certificate shall state that the quantity specified on the certificate is eligible to be entered into the United States during the applicable quota period. The certificate



Photograph-Raw sugar

shall provide spaces into which the following information must be inserted by the certifying authority of the foreign country: Quantity eligible to be entered; name of shipper; name of vessel; and port of loading. The following information, if known, may also be specified on the certificate by the certifying authority: name and address of consignee; expected date of departure; expected date of arrival in U.S.; and expected port(s) of arrival in the United States.

The certificate shall also provide an area where the certifying authority of the foreign country shall affix a seal or other form of authentication and sign and date the certificate.



U.S. Customs and Border Protection

Tariff Preference Level (TPL)

Many Free Trade Agreements (FTA) and other special trade legislation establish Tariff Preference Levels (TPL) that Customs and Border Protection (CBP) administers as tariff rate quotas. The importation of many of these goods are restricted by quantities, depending on the material and country of origin, based on Square Meter Equivalents (SME). The SME is a notional, common unit of quantity, constant across categories and time. Conversion Factors are used to convert units of quantity into SME.



SME is a common unit of measurement for textile and apparel goods. Primary units of measure (e.g., units, dozens, kilograms) are converted to SME using the conversion factors set forth in the Office of Textiles and Apparel (OTEXA) Schedule 3.1.3 of Appendix 3.1. The "Conversion Factor," as used in the correlation, refers to the factor specified to convert the category unit of measure to a square meter equivalent which makes the various units addable for stating overall trade. These factors are general and not intended to precisely state the fabric equivalent of every textile and apparel product.

The conversion factors are organized by textile categories. A textile category number is a three digit number that describes certain categories of textiles or apparel. Every Harmonized Tariff Schedule (HTS) classification for apparel falls under a textile category number.

For example, 1,000 dozen women's cotton knit blouses, this falls under HTS 6106.10.0010 and textile category 339. Since the conversion factor for 339 is 6.0 SME for each dozen units, the importer must present an earned import allowance certificate for 6,000 SME. An addi-

tional example is category 659 for men's and boy's swimwear for which the unit of measure is kilogram and the conversion is 14.40 SME per kilogram. Furthermore, for men's and boy's wool suits category 443, the unit of measure is NO (units) and the conversion factor is 3.760 SME per unit.

Determining the time of fill and any proration of the TPLs becomes increasingly complex depending upon the combination of textile categories at the time of fill.

The Textile Correlation for converting to SMEs is maintained by the [OTEXA](#) at the U.S. Department of Commerce.

"As you can imagine, determining the time of fill and any proration of the TPLs becomes increasingly complex depending upon the combination of textile categories at the time of fill. "

Reminder for Tuna Quota

NMFS will provide the final quota limit to CBP in March 2012. If a warehouse entry is liquidated prior to receipt of the final restraint limit from NMFS, it is recommended that the importer file a protest to ensure proper processing of any applicable refund once the final proration is determined.

FIRST COME-FIRST SERVED (FC-FS)

For quota to be processed the goods must have arrived and the entry paperwork presented. The date and time entry summary documents are presented to CBP are important in quota processing. CBP needs to determine in what order filers are requesting trade benefits. When the quantity requested (presented) is more than the balance available, duty preference must be granted in order of request. Quota priority is the precedence granted to one entry over other entries subject to the same quota. For example, if one entry is presented in the morning and another in the afternoon and both shipments are subject to the same quota, the

entry submitted in the morning would have priority because it was submitted earlier. Quota status is the standing that entitles merchandise to a reduced rate of duty under a tariff-rate quota or to any other trade benefit. If the quota filled at noon and an entry is presented at 1:00 PM, the entry would not have an accepted status. Date and time of presentation under the FC-FS quota system becomes the official record that is maintained with the entry package. If CBP personnel do not find a date/time stamp on the document when processing quota, the date and time of quota processing is used to represent presentation.

For questions, comments, or suggesting articles for the *Textile and Quota Newsletter*, please email:

HQ.quota@dhs.gov



U.S. Customs and Border Protection

The Complex and Ever-Changing World of Textiles

Evolutionary Time-Line of Duty-Free Preferences for Textiles and Apparel



Thirty years ago, imports of textile and apparel goods were limited by country-specific bilateral textile agreements which set quota limits. Duty-free access to the United States - for any product - was relatively new (under the Generalized System of Preferences) and unheard of for sensitive products such as textiles. The first U.S. free trade agreement, with Israel entered into force in April 1985.

In 1994, the international trading community (then signatories to the GATT) concluded the Uruguay Round Agreement creating the World Trade Organization (WTO). One of the pillars of the new trade framework was the 10-year phase out of the multilateral quota system for textiles and apparel. Also in 1994, the United States entered into a new free trade agreement, the North American Free Trade Agreement (NAFTA) with Canada and Mexico. NAFTA would eventually permit qualifying goods from Canada and Mexico to enter the United States duty-free, but only after a 10-year phase out of duties. This means that NAFTA-qualifying goods became duty-free at the same time as the elimination of quotas on other WTO suppliers – on January 1, 2005.

In 2000, the U.S. Congress passed the Trade Development

Act, creating the unilateral preference programs for Sub-Saharan Africa (the African Growth and Opportunity Act) and Caribbean Basin (the Caribbean Basin Trade Partnership Act). At the time, the fact that benefits included quota-free treatment for qualifying apparel was just as much an advantage as the duty-free benefits.

By the time quotas were eliminated on January 1, 2005, duty-free benefits for textile and apparel goods were also available to Andean nations under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), Chile, Singapore and Egypt (under the Qualifying Industrial Zones). Quotas remained for Vietnam until January 2007 when the Southeast nation joined the WTO, and China until January 2009 due to special safeguard quotas which were part of China's accession agreement to the WTO in 2001.

Today, the number of countries eligible for *conditional* duty-free access to the U.S. market for textile and apparel goods has grown even further to include: Australia, CAFTA countries (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua), Bahrain, Morocco, Peru, and Oman. And shortly, Korea, Colombia, and Panama will be joining that list.

While it is not CBP's role to negotiate the terms of these preference programs or free trade agreements, the Textile/Apparel Policy and Programs Division and the Trade Agreements Division (non-textiles) serve in an advisory

role to the U.S. Trade Representative (USTR) to ensure the negotiated rules can be efficiently implemented and enforced. Once agreements are signed and approved by the legislative bodies in all of the partner countries, including the United States, then CBP textile and non-textile experts review draft documents which, when published by either USTR or the U.S. International Trade Commission (USITC), will formally modify the Harmonized Tariff Schedule (HTS) and implement the agreement or preference program.

CBP port personnel are on the front line to ensure that the *conditional* rules for preferential duty treatment are correctly applied and enforced. Not an easy job, particularly for textiles, considering that no two sets of rules for textile and apparel goods are the same! Remember to always consult the General Notes of the HTS for the specific agreement or country subject to verification is essential to proper documentation review. Sources such as the Textile/Apparel Policy and Programs team here at HQ are available to port personnel

The chart "Timeline of Trade Agreements" (next page) provides a quick reference for the HTS General Note or Chapter 98 citation, along with the Special Program Indicator (SPI), for each of the preference programs or free trade agreements with textile and apparel provisions.

From 1985 to 1994, the only duty-free supplier of textile and apparel goods to the United States was Israel.

In 2001 (10 years ago), the duty-free suppliers of textiles and apparel to the U.S. market were Israel, AGOA and CBTPA beneficiaries, and the new FTA partner, Jordan (as of December 17, 2001).

For textiles, no two preference programs or FTAs follow the same rules.



U.S. Customs and Border Protection

TIMELINE OF TRADE AGREEMENTS



Year	Free Trade Agreement or Preference Program *	GN or HTS 98	SPI
1985	U.S.-Israel Free Trade Agreement	GN 8	IL
1994	North American Free Trade Agreement (NAFTA) with Mexico and Canada	GN 12	CA MX
1999	Jordan Qualifying Industrial Zones (QIZ)	GN 3(v)	N
2000	Africa Growth and Opportunity Act (AGOA)	9819	n/a
	Caribbean Basin Trade Partnership Act (CBTPA)	9820	n/a
2001	U.S.-Jordan Free Trade Agreement	18	JO
2002	Andean Trade Promotion and Drug Eradication Act (ATPDEA)	9821	n/a
2004	U.S.-Chile Free Trade Agreement	26	CL
	U.S.-Singapore Free Trade Agreement	25	SG
	Egypt Qualifying Industrial Zones	3(v)	N
January 1, 2005– Absolute Textile Quotas Eliminated for all WTO Members except China			
2005	U.S.-Australia Free Trade Agreement	28	AU
2006	U.S.-Central America and Dominican Republic Free Trade Agreement (CAFTA-DR) for El Salvador, Guatemala, Honduras and Nicaragua	29	P
	U.S.-Morocco Free Trade Agreement	27	MA
	U.S.-Bahrain Free Trade Agreement	30	BH
2007	CAFTA-DR for Dominican Republic	29	P
January 1, 2009- WTO Safeguard Quotas on China Eliminated			
2009	U.S.-Oman Free Trade Agreement	31	OM
	U.S.-Peru Trade Promotion Agreement	32	PE
	CAFTA-DR for Costa Rica	29	P
2012?	U.S.-Korea Free Trade Agreement	?	?
	U.S.-Colombia Trade Promotion Agreement	?	?
	U.S.-Panama Free Trade Agreement	?	?

* Not a comprehensive list; additional preference programs cover non-textile goods; AGOA, CBTPA and ATPA non-textile claims utilize SPI, not Chapter 98 provisions to make claims.



TARIFF RATE QUOTA (TRQ)

Import quotas control the amount or volume of various commodities that can be imported into the United States during a specified period of time. Quotas are established by legislation, Presidential Proclamations or Executive Orders. Quotas are announced in specific legislation or may be provided for in the Harmonized Tariff Schedule of the United States (HTSUS).

Tariff-rate quotas permit a specific quantity of imported merchandise to be entered at a reduced rate of customs duty during the quota period. There is no limitation of the amount of the quota product that may be imported into the U.S. at any time, but quantities entered during the quota period in excess of the quota quantity for that period are subject to higher duty rates. Duties at the reduced rates are assessed on shipments entered under the quota. When the quota is almost filled, CBP ports are instructed to require the deposit of estimated duties at the over-quota duty rates as of a specified date, and to report the time of official acceptance of each entry. When an official determination is made of the date and time the quota is filled, CBP field officers are authorized to rebate the higher duty rates on that portion of the merchandise entitled to preference, and to collect the higher rate of duty on portions that are not entitled to preference.



The quota status of a commodity subject to a tariff-rate quota cannot be determined in advance of its entry. The quota rates of duty are ordinarily assessed on such commodities entered from the beginning of the quota period until such time in the period as it is determined that imports are nearing the quota level. CBP port directors are then instructed to require the deposit of estimated duties at the over-quota duty rate and to report the time of official presentation of each entry. A final determination is then made of the date and time when a quota is filled, and all port directors are advised accordingly.

Some of the quotas are invariably filled at or shortly after the opening of the quota period. These are considered "Opening Moment" quotas. Each of these quotas is therefore officially opened at noon Eastern Standard Time, or the equivalent in other time zones, on the designated effective date (19 CFR 132.12(b)). When the total quantity for these entries filed at the opening of the quota period exceeds the quota, a proration is determined and offered to the importers. This assures an equitable distribution of the low rate quota.

U.S. Customs and Border Protection (CBP) administers the majority of import quotas. The Commissioner of CBP controls the importation of quota merchandise, but has no authority to change or modify any quota. Other government agencies, such as the Department of Agriculture, National Marine Fisheries Service, International Trade Commission, or the Department of Commerce (DOC), in conjunction with the Office of the United States Trade Representative, determine and fix quota limits.

Some quotas are global while others allocate specified quantities to designated foreign countries. These "Opening Moment" quotas are opened officially at a specified time on the first workday of the quota period with procedures in place to ensure that all importers have an equal opportunity to simultaneously present their entries. No importer may present an entry for a quantity in excess of the quota limit.

If the quantity of quota merchandise covered by the entries presented for the opening of the quota period exceeds the amount available, the merchandise is released on a pro rata basis (i.e., the ratio between the quota limit and the total quantity presented for entry).

Quotas not filled at the official opening of the quota period are thereafter administered on a "first come, first served" (FCFS) basis, that is, in the order that each entry/entry summary is presented.

"Some of the quotas are invariably filled at or shortly after the opening of the quota period. Each of these quotas is therefore officially opened at noon Eastern Standard Time, or the equivalent in other time zones, on the designated effective date."



Looking forward to Opening Moment



HOW IS PRORATION DETERMINED?



In order to ensure smooth and timely transitions during the proration period, it is necessary to establish certain guidelines. In accordance with 19 CFR 132.12 (b) and (c); entry summaries submitted simultaneously and in proper form shall be prorated by Headquarters against the restraint limit to determine the allowable percentage each importer can enter. Merchandise that exceeds the limits shall be warehoused, exported or destroyed as indicated in 19CFR132.5 (c).

If prorated, the entry summaries/ warehouse withdrawals will be returned to the filer for adjustments. In accordance to 19 CFR 132.12 (i), the adjusted summary/ withdrawal should be returned to CBP with the appropriate duties attached within 5 working days of the dated correspondence.

Opening Moment Proration

Tariff-rate quotas can and do oversubscribe at opening or reopening of the quota. HQ Quota determines from review of historical fill tables, which quotas are expected to fill at opening moment. These quotas will be set in ACS to be automatically held upon presentation.

Once HQ Quota reviews the “hold file,” a determination is made as to whether or not the quota oversubscribed. If the quota did not oversubscribe, a QBT is issued advising that the quota did not fill and that all entry summaries on the hold file have been charged to the quota and may be released.

If the quota did oversubscribe at opening, HQ Quota carefully reviews the hold file to ensure that all entries are for the opening. If there are times/dates that are before or after opening moment, field offices are contacted to determine the status of the entry line. Once the hold file is in good order (approximately 3 to 5 working days), the proration is determined. The restraint level is divided by the amount presented.

For Example:

Restraint Level divided by Presented Amount equal Proration. 1,500,000 divided by 1,525,000 equals 0.98360655737

A QBT is then sent notifying CBP field officers, brokers, and importers that the quota was oversubscribed at the opening, instructions, and the prorata percentage.

Importers/Brokers also have the right to a transfer of allotment to another port. However, importers may not transfer their allotment to another importer. The transfer of allotment quantities are reviewed by HQ Quota to ensure the proration is not exceeded.



Certain dairy products are subject to annual TRQs administered by the USDA and may be imported at the in quota rate only under import licenses issued by that department.



2012 SUGAR HTS CHANGES



Notes on New HTS Codes affecting sugar in Chapter 17 in 2012:

Modifications to Chapter 17 of the U.S. Harmonized Tariff Schedule will occur in 2012 to separate the classification of non-centrifugal sugar such as panella, from other (centrifugal) raw cane sugars.

Non-centrifugal sugar must have a polarity of 69 degrees or more, but less than 93 degrees .

Summary of changed HTS sugar lines:

Current HTS

- New 2012 HTS

1701.11.0500 -1701.13.0500 Raw cane sugar - GN 15 Non-centrifugal (requires a letter from USDA)

-1701.14.0500 Raw cane sugar - GN 15 Centrifugal (requires a letter from USDA)

1701.11.1000 -1701.13.1000 Raw cane sugar - Non Centrifugal, Additional U.S. Note 5, "in-quota"

-1701.14.1000 Raw cane sugar - Centrifugal, Additional U.S. Note 5, "in-quota"

1701.11.2000 -1701.13.2000 Raw cane sugar - Non-Centrifugal with Re-Export License

-1701.14.2000 Raw cane sugar - Centrifugal with Re-Export License

1701.11.5000 -1701.13.5000 Raw cane sugar - Non-centrifugal, Other than Additional U.S. Note 5 (generally high-duty or under special preference such as trade agreement)

-1701.14.5000 Raw cane sugar - Centrifugal, Other than Additional U.S. Note 5 (generally high-duty or under special preference such as trade agreement)

In numerical sequence, the new raw sugar HTS lines will be as follows:

Raw Sugar - Beet - 1701.12.10 - Additional U.S. Note 5, "in-quota"

1701.12.50 - Other than Additional U.S. Note 5 (generally high-duty or under special preference such as trade agreement)

Raw Sugar - Cane - Non-centrifugal -1701.13, described in a new Chapter 17 subheading Note 2

1701.13.10 - Additional U.S. Note 5, "in-quota"

1701.13.20 - Requires re-export license

1701.13.50 - Other than Additional U.S. Note 5 (generally high-duty or under special preference such as trade agreement)

Raw Sugar - Cane - Centrifugal sugar, 1701.14 ("Other than non-centrifugal")

1701.14.10 - Additional U.S. Note 5, "in-quota"

1701.14.20 - Requires re-export license

1701.14.50 - Other than Additional U.S. Note 5 (generally high-duty or under special preference such as trade agreement)

There is no change to the raw beet sugar subheading 1701.12, except that raw beet sugar in 1701.12 now precedes in numerical order the raw cane sugar classifications under 1701.13 and 1701.14. Entry under a Re-Export License will be permitted for both centrifugal and non-centrifugal sugar, lines 1701.13.20 and 1701.14.20.

These changes will also be reflected in General Note 4(d) where relevant, regarding eligibility for the Generalized System of Preferences (GSP).

"Modifications to Chapter 17 of the U.S. Harmonized Tariff Schedule will occur in 2012 to separate the classification of non-centrifugal sugar such as panella, from other (centrifugal) raw cane sugars.

Non-centrifugal sugar must have a polarity of 69 degrees or more, but less than 93 degrees ."



U.S. Customs and Border Protection

Next and Final Steps Toward Implementing Free Trade Agreements with Korea, Panama and Colombia



The length of time necessary to implement an agreement varies according to the completion of the following steps:

the United States (HTSUS) and to adding a new General Note (GN) and other provisions as needed per the terms of the agreement.

On October 12, 2011, the U.S. Congress approved legislation to implement each of the U.S. Free Trade Agreements (FTAs) with Colombia, Korea and Panama. Similarly, the legislatures in Colombia, Korea and Panama also ratified the agreements and, as necessary, amended domestic laws to be in compliance with the terms of the respective agreement. But before the agreements may enter into force, each country (including the United States) must demonstrate its ability to comply with those obligations which enter into force on day one.

Ratification: approval by each partner country’s legislature;

Legal Review: exchange of legal documents and certification that each country enacted and implemented any changes to domestic laws needed to comply with the terms of the agreement;

Exchange of Diplomatic Notes: formality which establishes the date the agreement will enter into force.

All three of the agreements which are pending implementation are at the “legal review” stage. CBP Textile/Apparel Policy and Programs and Trade Agreements divisions will issue implementation instructions notifying the field of the entry into force of the agreements and short summary of the requirements for preferential treatment. USTR continues to interact with each of the partner countries regarding the measures needed to bring the agreements into force.

In the United States, once diplomatic notes are exchanged, President Obama will issue a Proclamation officially modifying the Harmonized Tariff Schedule of

Second Set of CAFTA-DR Textile Amendments or “Fixes” Waits for Congressional Approval



Once legislation is passed and signed the President, the Office of the U.S. Trade Representative (USTR) will undertake a legal review to ensure that all of the CAFTA-DR parties are ready to implement the changes simultaneously. Once the implementation date is set, the President will issue a Proclamation to modify the HTSUS as needed.

the pocket bag fabric for apparel must be made from CAFTA-DR fabric from CAFTA-DR yarns. In exchange for agreeing to the U.S. request for that modification, each of the CAFTA-DR countries added additional “cut and sew” tariff shift rules for specific products, or modified the country-specific Tariff Preference Level (TPL) provisions (for Costa Rica and Nicaragua). The first set of amendments is already incorporated into HTS General Note 29 (and the Chapter 99 provisions for the TPLs).

At the inaugural meeting of the U.S.-Central America-Dominican Republic Free Trade Commission in San Salvador in February 2011, the seven signatories to the agreement finalized language for a series of technical “fixes” to modify the textile rules of origin related to sewing thread, short supply, and certain tariff shift rules under the CAFTA-DR. However, these changes cannot enter into effect until the U.S. Congress approves legislation to implement the amendments. At this time, legislative language has been reviewed by congressional staff, but has yet to be formally introduced.

These technical “fixes” represent the second time since its implementation on March 1, 2006 that the CAFTA-DR textile rules will be amended.

The textile provisions of the CAFTA-DR were previously altered when the so-called “pocketing amendments” entered into force on August 15, 2008. The “pocketing amendments” added the chapter rule that states

The Textile/Apparel Policy and Programs Division will continue to monitor the approval and implementation process and will issue additional guidance as information becomes available about when this second set of CAFTA-DR textile amendments will enter into effect.