



There's no such thing as a free lunch

By Suzanne Richer

The Central America Free Trade Agreement will level the playing field by eliminating tariffs on U.S. exports to CAFTA countries. It will also eliminate tariffs on most imports of textiles and apparel, with certain exceptions.

But there's no such thing as a free lunch when it comes to claiming preferential treatment under free-trade agreements and other programs outlined in import regulations and listed in the Harmonized Tariff Schedule of the

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United States. Companies must provide the necessary documentation to prove their eligibility.

Under the North American Free Trade Agreement, for example, an exporter from Canada or Mexico will pre-qualify a product for eligibility by properly classifying the product and confirming the rule of origin that applies. It must also complete the NAFTA certificate, a document that verifies the product's eligibility for preferential duty-free treatment. Customs may not demand to see it, but the U.S. importer must have this document on file at the time of importation. In many cases, importers

have products that qualify for NAFTA treatment, only to learn in an audit that the key words on the invoice, such as NAFTA eligible, cannot be backed up with a NAFTA certificate. Or the certificate on file is not dated for the time frame of the shipment, leaving the product ineligible for duty-free status.

Differences of opinion between an importer and exporter over a product's classification should be clarified before the shipment crosses the border — not during an audit review.

Similar provisions apply to other trade agreements, as well as special programs such as U.S. Goods Returned (U.S.G.R.). Under this program, a U.S. product being returned to the United States may be eligible for duty-free status under a 9801 classification code, provided that the U.S. importer has two declarations on file. The first declaration is from the shipper confirming that the product returned was not increased in value or improved in condition while abroad. The second declaration is from the U.S. importer confirming that the product is indeed of U.S. origin. These two documents together will safeguard a company during an audit. Often, at the time of importation, a simple note is included on the commercial invoice, such as U.S.G.R. If the shipment clears Customs duty-free, it is up to the importer to maintain the required statements so that under Customs scrutiny, they will be eligible for the reduced duty status.

In either case, if your company is using a trade agreement or special provision to claim that a product is eligible for reduced import duties or duty-free treat-

ment, proper documentation must be on file to substantiate that claim. If the U.S. importer is not able to provide the documentation required by Customs, it will then have to pay the correct amount of duty for which the product should have been entered, along with any interest on that duty and potential fines. Exporters may be at risk when their customers contact them looking for assistance in paying these additional duties or fines since the customer based the claim based on the exporter's paperwork.

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Working together with suppliers, customs trade consultants and Customs will help to ensure that your company has the proper documentation on file to claim duty-free status on your shipments. Safeguarding your company's trade-agreement programs in advance of a shipment will help protect you from fines and penalties as well as additional duties on product long sold. Buyer beware! ⚠️

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