

**§ 10.844**

(iv) Any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential tariff treatment is made under §10.847 of this subpart.

(k) *Wiring sets.* Any article classifiable in subheading 8544.30.00 of the HTSUS, as in effect on December 20, 2006, that is the product or manufacture of Haiti, provided the article satisfies the value-content requirement set forth in §10.844(b) of this subpart. For purposes of this paragraph, the term “product or manufacture of Haiti” refers to an article that is either:

(1) Wholly the growth, product, or manufacture of Haiti; or

(2) A new or different article of commerce that has been grown, produced, or manufactured in Haiti.

[CBP Dec. 07–43, 72 FR 34369, June 22, 2007, as amended at CBP Dec. 08–24, 73 FR 56725, Sept. 30, 2008]

**§ 10.844 Value-content requirement.**

(a) *Certain apparel articles—(1) General.* Except as provided in paragraph (a)(2) of this section, apparel articles described in §10.843(a) of this subpart will be eligible for duty-free treatment only if, for each entry of such articles in the applicable one-year period for which a duty-free claim is made for such articles under §10.847(a) of this subpart, the sum of the cost or value of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, is not less than (as applicable):

(i) 50 percent or more of the declared customs value of the articles entered during the initial applicable one-year period, the second applicable one-year period, and the third applicable one-year period;

(ii) 55 percent or more of the declared customs value of the articles entered during the fourth applicable one-year period; and

(iii) 60 percent or more of the declared customs value of the articles entered during the fifth applicable one-year period.

(2) *Annual aggregation—(i) Initial applicable one-year period.* In the initial applicable one-year period, the applicable value-content requirement set forth in paragraph (a)(1) of this section may also be met for apparel articles of a producer or an entity controlling production that are entered during the initial applicable one-year period and for which duty-free treatment is claimed under §10.847(a) of this subpart by aggregating the cost or value of materials and the direct costs of processing operations, as those terms are used in paragraph (a)(1) of this section, with respect to all apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the initial applicable one-year period (except as provided in paragraph (a)(2)(iii) of this section).

(ii) *Other applicable one-year periods.* In each of the second, third, fourth, and fifth applicable one-year periods, the applicable value-content requirement set forth in paragraph (a)(1) of this section may also be met for apparel articles of a producer or an entity controlling production that are entered during the applicable one-year period and for which duty-free treatment is claimed under §10.847(a) of this subpart by aggregating the cost or value of materials and the direct costs of processing, as those terms are used in paragraph (a)(1) of this section, with respect to all apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the preceding applicable one-year period (except as provided in paragraph (a)(2)(iii) of this section).

(iii) *Exclusions from annual aggregation calculation.* The entry of an apparel article that is wholly assembled or knit-to-shape in Haiti and is receiving preferential tariff treatment under any provision of law other than section 213A(b)(1) of the CBERA (19 U.S.C. 2703A(b)(1)) or is subject to the “General” subcolumn of column 1 of the HTSUS will only be included in an annual aggregation under paragraph

(a)(2)(i) or (a)(2)(ii) of this section if the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entry in the aggregation.

*Example.* A Haitian producer elects to use the annual aggregation method in the initial applicable one-year period, and also elects to include in the aggregation calculation an entry of apparel articles receiving preferential tariff treatment under another preference program. The producer ships to the United States four shipments during the initial applicable one-year period and all are entered during that period. The first shipment of apparel (qualifying for and receiving preference under the Caribbean Basin Trade Partnership Act (CBTPA)) has an appraised value of \$100,000 and meets a value-content percentage (under § 10.844(a) of this section) of 80%. The second shipment of apparel is wholly assembled in Haiti, has an appraised value of \$100,000, and meets a value-content percentage of 40%. The third shipment is wholly assembled in Haiti, has an appraised value of \$50,000, and meets a value-content percentage of 0%. The last shipment is wholly assembled in Haiti, has an appraised value of \$20,000, and meets a value-content requirement of 80%. Taken together, the four shipments have an appraised value of \$270,000 and meet a value-content percentage of 50.4%. The apparel articles shipped to the United States in the last three shipments would qualify for duty-free treatment under section 213A(b)(1) of the CBERA and § 10.843(a) of this subpart as the applicable value-content requirement for the initial applicable one-year period (50 %) is satisfied. This conclusion assumes that: The CBTPA-eligible apparel articles in the first shipment (that were included in the annual aggregation calculation at the election of the producer) were wholly assembled or knit-to-shape in Haiti, as required in § 10.844(a)(2)(iii) of this section; and the articles in the last three shipments that were wholly assembled in Haiti satisfy all other applicable requirements set forth in this subpart.

(3) *Election to use the annual aggregation method for an applicable one-year period.* A producer or entity controlling production may elect to use the individual entry or annual aggregation method in any applicable one-year period and then elect to use the other method during the subsequent applicable one-year period, provided that all applicable requirements are met during the applicable one-year period preceding the period in which the switch is made. If a producer or entity controlling production using the indi-

vidual entry method in an applicable one-year period elects to use the annual aggregation method during the subsequent applicable one-year period, the declaration of compliance described in § 10.848 of this subpart must be submitted to CBP within 30 days following the end of the applicable one-year period in which the individual entry method was used.

(4) *Failure to meet applicable requirements—(i) Initial applicable one-year period.* Except as provided in paragraph (a)(4)(iii) of this section, if CBP determines that apparel articles of a producer or entity controlling production that are entered as articles described in § 10.843(a) of this subpart during the initial applicable one-year period have not met the requirements of § 10.843(a) of this subpart or the applicable value-content requirement set forth in paragraph (a)(1) of this section, then:

(A) All apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under § 10.847(a) of this subpart that are entered under the annual aggregation method during that initial applicable one-year period will be denied duty-free treatment;

(B) Those apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under § 10.847(a) of this subpart that are entered on an individual entry basis and that fail to meet the requirements of § 10.843(a)(1) of this subpart or the applicable value-content requirement set forth in paragraph (a)(1) of this section during that initial applicable one-year period will be denied duty-free treatment. However, apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under § 10.847(a) of this subpart that are entered on an individual entry basis prior to an election being made by the producer or entity controlling production to use the annual aggregation method will be considered to have met the applicable value-content requirement if that requirement is met through application of the individual entry method; and

(C) All apparel articles of the producer or entity controlling production for which duty-free treatment is

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claimed under §10.847(a) of this subpart, whether entered on an individual entry or annual aggregation basis, will not be eligible for duty-free treatment during the succeeding applicable one-year periods until the increased percentage in the value-content requirement specified in paragraph (a)(4)(iii) of this section has been met by all the apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the immediately preceding applicable one-year period, unless the articles qualify for tariff benefits pursuant to the provisions of §10.845 of this subpart.

(ii) *Other applicable one-year periods.* Except as provided in paragraph (a)(4)(iii) of this section, if CBP determines that apparel articles of a producer or entity controlling production that are entered as articles described in §10.843(a) of this subpart during any applicable one-year period following the initial applicable one-year period have not met the requirements of §10.843(a) or the applicable value-content requirement set forth in paragraph (a) of this section, then:

(A) Those apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under §10.847(a) of this subpart that are entered on an individual entry basis and that fail to meet the requirements of §10.843(a)(1) or the applicable value-content requirement set forth in paragraph (a)(1) of this subpart during that applicable one-year period will be denied duty-free treatment; and

(B) All apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under §10.847(a) of this subpart, whether entered on an individual entry or annual aggregation basis, will not be eligible for duty-free treatment during the succeeding applicable one-year periods until the increased percentage in the value-content requirement specified in paragraph (a)(4)(iii) of this section has been met by all the apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the immediately preceding applicable one-year

period, unless the articles qualify for tariff benefits pursuant to the provisions of §10.845 of this subpart.

(iii) *Entity controlling production of apparel articles of a producer also producing for its own account.* Where an entity controlling production controls the production of apparel articles, as described in §10.843(a) of this subpart, of a producer that also produces for its own account, the failure of apparel articles of that producer to meet the requirements of §10.843(a) of this subpart or the applicable value-content requirement set forth in paragraph (a) of this section in an applicable one-year period, either under the annual aggregation method or the individual entry method, will not affect the eligibility for duty-free treatment under §10.843(a) of this subpart of those apparel articles of that producer which are part of a claim for such treatment made on behalf of the entity controlling production.

*Example.* Importer D, an entity controlling production, purchases apparel articles that meet the description in §10.843(a) of this subpart from Haitian Producers A, B, and C and enters those articles during the initial applicable one-year period. Importer D elects to use the annual aggregation method during that period. The three producers also produce apparel for other U.S. importers and each producer elects to use the annual aggregation method. The apparel articles purchased by Importer D from the three producers and entered during the initial applicable one-year period meet a value-content percentage of 51.7%. However, the value-content percentage met by all the apparel that is wholly assembled in Haiti by Producer C and entered (including the apparel imported by Importer D) during the initial applicable one-year period is 49%. As all of the articles, in the aggregate, purchased by Importer D from the three producers and entered during the initial applicable one-year period satisfy the applicable value-content requirement (50%), all of these articles are entitled to duty-free treatment under section 213A(b)(1) of the CBERA and §10.843(a) of this subpart, assuming all other applicable requirements are met. The failure of Producer C to meet the 50% value-content requirement with respect to all of the articles that it wholly assembled in Haiti and entered during the initial applicable one-year period will not prevent duty-free status being claimed for the

articles purchased by Importer D from Producer C. Therefore, the consequences of Producer C's failure to meet the 50% value-content requirement include the denial of preferential tariff treatment for all articles that are wholly assembled in Haiti by Producer C and entered during the initial applicable one-year period, *except for* those articles sold by Producer C to Importer D. An additional consequence of Producer C's failure to meet the value-content requirement in the initial applicable one-year period is that articles wholly assembled in Haiti by Producer C and entered during succeeding applicable one-year periods will be ineligible for duty-free treatment until the appropriate increased value-content requirement has been met (*see* §10.844(a)(4)(i)(C) of this subpart), except to the extent the articles qualify for preference under §10.845 of this subpart.

(iv) *Increased percentage.* For apparel articles of a producer or entity controlling production to meet the increased percentage referred to in paragraphs (a)(4)(i)(C) and (a)(4)(ii)(B) of this section, the sum of the cost or value of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, must not be less than the applicable percentage under paragraph (a)(1) of this section, plus 10 percent, of the aggregate declared customs value of all apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the immediately preceding applicable one-year period. Once the increased value-content percentage has been met for the articles of a producer or entity controlling production that are entered during an applicable one-year period, the articles of that producer or entity controlling production that are entered during the next succeeding applicable one-year period will be subject to the applicable value-content percentage specified in paragraph (a)(1) of this section.

(v) *Articles of a new producer or entity controlling production.* Apparel articles of a new producer or entity controlling production electing to use the annual aggregation method for purposes of meeting the applicable value-content requirement must first meet the in-

creased value-content percentage specified in paragraph (a)(4)(iv) of this section as a prerequisite to receiving duty-free treatment during a succeeding applicable one-year period. Apparel articles of a new producer or entity controlling production electing to use the individual entry method are not subject to the requirement of first meeting the increased value-content percentage as a prerequisite to receiving duty-free treatment during the first year of participation or in any succeeding applicable one-year period. For purposes of this paragraph, a "new producer or entity controlling production" is a producer or entity controlling production that did not produce or control production of articles that were entered as articles pursuant to §10.843(a) of this subpart during the immediately preceding applicable one-year period.

*Example 1.* A Haitian producer begins production of apparel articles that meet the description in §10.843(a) of this subpart during the second applicable one-year period and elects to use the annual aggregation method for each applicable one-year period. The producer's articles entered during the second applicable one-year period meet a value-content percentage of 55%; articles entered during the third applicable one-year period meet a value-content percentage of 65%; and articles entered during the fourth applicable one-year period meet a value-content percentage of 55%. The producer's articles may not receive duty-free treatment during the second applicable one-year period because there was no production (and thus no entered articles) during the immediately preceding period (the initial applicable one-year period) on which to assess compliance with the applicable value-content requirement. The producer's articles also may not receive duty-free treatment during the third applicable one-year period because the increased value-content percentage requirement (50% plus 10% = 60%) was not met in the immediately preceding period (the second applicable one-year period). However, the producer's articles are eligible for duty-free treatment during the fourth applicable one-year period based on compliance with the 60% value-content percentage requirement in the immediately preceding period (the third applicable one-year period). The producer's articles also are eligible for duty-free treatment during the fifth applicable one-year period based on compliance with the 55% value-content percentage requirement in the immediately preceding period (the fourth applicable one-year period).

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*Example 2.* Same facts as in example 1, except that the producer elects to use the individual entry method for purposes of meeting the applicable value-content requirement for each applicable one-year period. The producer's articles entered during the second applicable one-year period are eligible for duty-free treatment because these articles meet the requisite 50% value-content requirement. The producer's articles also may receive duty-free treatment during the third, fourth, and fifth applicable one-year periods based on compliance with the applicable value-content requirements for each of those periods set forth in paragraph (a)(1) of this section.

(vi) *Notification of compliance with the increased percentage—(A) General.* If apparel articles of a producer or entity controlling production are required to meet the increased value-content percentage described in paragraph (a)(4)(iv) of this section, either because of failure to meet the requirements of §10.843(a) or the applicable value-content requirement set forth in paragraph (a) of this section in an applicable one-year period, or because the producer or entity controlling production is a new producer or entity controlling production, as defined in paragraph (a)(4)(v) of this section, that elects to use the annual aggregation method, the importer of such articles must notify CBP that the increased percentage has been met in an applicable one-year period by submitting to CBP the declaration of compliance described in §10.848 of this subpart within 30 days following the end of the applicable one-year period. An importer that is required to submit a declaration of compliance under this paragraph must submit such a declaration for each importer of record identification number used by that importer. A declaration of compliance required under this paragraph must be sent to the address set forth in §10.848(a) of this subpart.

(B) *Contents.* A declaration of compliance required under paragraph (a)(4)(v)(A) of this section must include, in addition to the information specified in §10.848(c) of this subpart, a statement as to whether the increased value-content percentage was required because the apparel articles failed to meet the production standards or the applicable value-content requirement or because the producer or entity controlling production was a new producer

or entity controlling production that elected to use the annual aggregation method.

(C) *Effect of noncompliance.* If an importer fails to submit to CBP the declaration of compliance required under paragraph (a)(4)(v)(A) of this section within 30 days following the end of the applicable one-year period during which the increased value-content percentage was met for apparel articles of a producer or entity controlling production, CBP may deny duty-free treatment to all apparel articles, as described in §10.843(a) of this subpart, of that producer or entity controlling production that are entered by that importer during the next succeeding applicable one-year period. Additionally, the timely submission of a declaration of compliance is a prerequisite for a producer or entity controlling production to request retroactive application of duty-free treatment under §10.845 of this subpart for apparel articles that meet the increased value-content percentage during an applicable one-year period. However, the submission of a declaration of compliance is not a substitute for filing a request for liquidation or reliquidation of an entry for which retroactive duty-free treatment is sought under §10.845 of this subpart.

(5) *Inclusion of the cost of fabrics or yarns not available in commercial quantities in value-content requirement.* For purposes of meeting the applicable value-content requirement set forth in paragraph (a) of this section, either in regard to individual entries or entries entered in the aggregate, the following costs may be included:

(i) The cost of fabrics or yarns to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA; and

(ii) The cost of fabrics or yarns (without regard to their source) that are designated as not being available in commercial quantities for purposes of:

(A) Section 213(b)(2)(A)(v) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v));

(B) Section 112(b)(5) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(5));

(C) Section 204(b)(3)(B)(i)(III) or 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(i)(III) or 3203(b)(3)(B)(ii)); or

(D) Any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement that enters into force with respect to the United States.

(b) *Wiring sets*. An article described in §10.843(d) of this subpart will be eligible for duty-free treatment during the five-year period ending on December 19, 2011, only if the sum of the cost or value of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, plus the direct costs of processing operations performed in Haiti or the United States, or both, is not less than 50 percent of the declared customs value of the article.

(c) *Eligible countries described*. As used in this section, the term “eligible countries” includes:

(1) The United States;

(2) Israel, Canada, Mexico, Jordan, Singapore, Chile, Australia, Morocco, Bahrain, El Salvador, Honduras, Nicaragua, Guatemala, Dominican Republic, and any other country that is a party to a free trade agreement with the United States that is in effect on December 20, 2006, or that enters into force thereafter; and

(3) The designated beneficiary countries listed in General Notes 11 (Andean Trade Preference Act), 16 (African Growth and Opportunity Act), and 17 (Caribbean Basin Trade Partnership Act) of the HTSUS.

(d) *Cost or value of materials*—(1) *Materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section defined*—(i) *Certain apparel articles*. As used in paragraph (a) of this section, the words “materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section” refer to those materials incorporated into an article that are either:

(A) Wholly obtained or produced, within the meaning of §102.1(g) of this chapter, in Haiti or one or more eligi-

ble countries described in paragraph (c) of this section; or

(B) Determined to originate in Haiti or one or more eligible countries described in paragraph (c) of this section by application of the provisions of §102.21 of this chapter.

(ii) *Wiring sets*. As used in paragraph (b) of this section, the words “materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section” refer to those materials incorporated into an article that are either:

(A) Wholly the growth, product, or manufacture of Haiti or one or more eligible countries described in paragraph (c) of this section; or

(B) Substantially transformed in Haiti or one or more eligible countries described in paragraph (c) of this section into a new or different article of commerce which is then used in Haiti in the production of a new or different article of commerce that is imported into the United States.

(2) *Determination of cost or value of materials*—(i) *Costs included*. (A) For purposes of paragraphs (a) and (b) of this section, and subject to paragraphs (d)(2)(i)(B) and (d)(2)(ii) of this section, the cost or value of materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section includes:

(1) The manufacturer’s actual cost for the materials;

(2) When not included in the manufacturer’s actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer’s plant;

(3) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(4) Taxes and/or duties imposed on the materials by Haiti or one or more eligible countries described in paragraph (c) of this section, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(1) All expenses incurred in the growth, production, or manufacture of

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the material, including general expenses;

(2) An amount for profit; and

(3) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(ii) *Costs deducted in regard to certain apparel articles.* For purposes of paragraph (a) of this section, in calculating the cost or value of materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, either in regard to individual entries or entries entered in the aggregate, deductions are to be made for the cost or value of:

(A) Any foreign materials used in the production of the apparel articles in Haiti; and

(B) Any foreign materials used in the production of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section.

(e) *Direct costs of processing operations—(1) Items included.* As used in paragraphs (a) and (b) of this section, the words “direct costs of processing operations” mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific articles under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported articles:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific articles, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific articles;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific articles; and

(iv) Costs of inspecting and testing the specific articles.

(2) *Items not included.* The words “direct costs of processing operations” do not include items that are not directly attributable to the articles under con-

sideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business that either are not allocable to the specific articles or are not related to the growth, production, manufacture, or assembly of the articles, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[CBP Dec. 07–43, 72 FR 34369, June 22, 2007, as amended at CBP Dec. 08–24, 73 FR 56728, Sept. 30, 2008]

### § 10.845 Retroactive application of duty-free treatment for certain apparel articles.

(a) *General.* Notwithstanding 19 U.S.C. 1514 or any other provision of law, if apparel articles, as described in § 10.843(a) of this subpart, of a producer or entity controlling production are ineligible for duty-free treatment in an applicable one-year period because the apparel articles of the producer or entity controlling production did not meet the requirements of § 10.843(a) of this subpart or the applicable value-content requirement set forth in § 10.844(a) of this subpart, and the apparel articles of the producer or entity controlling production satisfy the increased value-content percentage set forth in § 10.844(a)(4)(iii) of this subpart in that same applicable one-year period, the entry of any such articles made during that applicable one-year period will be liquidated or reliquidated free of duty, and CBP will refund any customs duties paid with respect to such entry, with interest accrued from the date of entry, provided that the conditions and requirements set forth in paragraph (b) of this section are met.

(b) *Conditions and requirements.* The conditions and requirements referred to in paragraph (a) of this section are as follows:

(1) The articles in such entry would have received duty-free treatment if they had satisfied the requirements of § 10.843(a) and the applicable value-content requirement set forth in § 10.844(a) of this subpart;

(2) A declaration of compliance with the increased value-content percentage