AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

of Duties on Watches and Watch Movements, properly executed, and authenticated by the Department of Commerce.

(c) By completing Form ITA–361, the insular producer may either:

(1) Transfer its entitlement, in whole or in part, to any other party for any consideration agreed to by the insular producer and the transferee, or

(2) Request the refund of duties to itself.

(d) A claimant must file Form ITA–361 with CBP at the same port where the watch import entry was originally filed and duties paid. The documentation accompanying Form ITA–361 shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

(e) When requesting the refund of duties on Form ITA–361, the claimant also must complete and submit to CBP the declaration on the form which reads as follows:

I declare that the information given above is true and correct to the best of my knowledge and belief; that no notices of exportation of articles with benefit of drawback were filed upon exportation of this merchandise from the United States; that no liquidated refunds on the articles relating to the present claim have been paid; and that no protest or request for litigation for refund of duties paid and herewith claimed has been made.

(f) A fee of 1 percent will be deducted from each refund request as reimbursement to salaries and expenses of those CBP personnel processing the request.

(g) Form ITA–360 expires 1 year from its date of issuance. Any refund request on Form ITA–361 made by either the insular producer itself or any transferee named on Form ITA–360 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA–361 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

(h) CBP will process only those refund requests made in accordance with the joint rules of the Departments of Commerce and the Interior governing the issuance and handling of certificates and the transfer of entitlements as contained in 15 CFR part 303.

[T.D. 84–16, 49 FR 1481, Jan. 12, 1984, as amended by T.D. 84–211, 49 FR 39044, Oct. 3, 1984; T.D. 89–1, 53 FR 51252, Dec. 21, 1988. Redesignated and amended by T.D. 97–75, 62 FR 46441, Sept. 3, 1997 ; CBP Dec. 08-25, 73 FR 40725, July 16, 2008]

§ 7.11 Guantanamo Bay Naval Station.

Articles of foreign origin may enter the area (both land and water) of the Guantanamo Bay Naval Station free of duty, but such articles shall be subject to duty upon their subsequent entry into the United States.

[28 FR 14636, Dec. 31, 1963]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Subpart A—General Provisions

ARTICLES EXPORTED AND RETURNED

Sec.
10.1 Domestic products; requirements on entry.
10.3 Drawback; internal-revenue tax.
10.4 Internal-revenue marks; erasure.
10.5 Shooks and staves; cloth boards; port director's account.
10.6 Shooks and staves; claim for duty exemption.
10.7 Substantial containers or holders.
10.8 Articles exported for repairs or alterations.
10.8a Imported articles exported and reimported.
10.9 Articles exported for processing.
10.10 [Reserved]

ARTICLES ASSEMBLED ABROAD WITH UNITED STATES COMPONENTS

10.11 General.
10.12 Definitions.
10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).
10.14 Fabricated components subject to the exemption.
10.15 Fabricated components not subject to the exemption.
10.16 Assembly abroad.
10.17 Valuation of exempted components.
10.18 Valuation of assembled articles.
10.19–10.20 [Reserved]
10.21 Updating cost data and other information.
10.23 Standards, quotas, and visas.
10.24 Documentation.

10.25 Textile components cut to shape in the United States and assembled abroad.
10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components or ingredients; articles assembled in a beneficiary country from textile components cut to shape in the United States.

FREE ENTRY—ARTICLES FOR THE USE OF FOREIGN MILITARY PERSONNEL

10.30c [Reserved]

TEMPORARY IMPORTATIONS UNDER BOND

10.31 Entry; bond.
10.33 Theatrical effects.
10.35 Models of women's wearing apparel.
10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.
10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.
10.37 Extension of time for exportation.
10.38 Exportation.
10.39 Cancellation of bond charges.
10.40 Refund of cash deposits.

INTERNATIONAL TRAFFIC

10.41 Instruments; exceptions.
10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.
10.41b Clearance of serially numbered substantial holders or outer containers.

ARTICLES FOR INSTITUTIONS

10.43 Duty-free status.
10.46 Articles for the United States.
10.47 [Reserved]

WORKS OF ART

10.48 Engravings, sculptures, etc.
10.49 Articles for exhibition; requirements on entry.
10.50 [Reserved]
10.52 Painted, colored or stained glass windows for religious institutions.
10.53 Antiques.
10.54 Gobelin and other hand-woven tapestries.

VEGETABLE OILS

10.56 Vegetable oils, denaturing; release.

POTATOES, CORN, OR MAIZE

10.57 Certified seed potatoes, and seed corn or maize.

BOLTING CLOTHS

10.58 Bolting cloths; marking.

WITHDRAWAL OF SUPPLIES AND EQUIPMENT FOR VESSELS

10.59 Exemption from customs duties and internal-revenue tax.
10.60 Forms of withdrawals; bond.
10.61 Withdrawal permit.
10.62 Bunker fuel oil.
10.62a Blanket withdrawals for certain merchandise.
10.62b Aircraft turbine fuel.
10.63 Landing of supplies and stores from receiving vessel in the United States.
10.64 Crediting or cancellation of bonds.
10.64a [Reserved]
10.65 Cigars and cigarettes.

ARTICLES EXPORTED FOR EXHIBITION, ETC.

10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedure on entry.
10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

THEATRICAL EFFECTS, MOTION-PICTURE FILMS, COMMERCIAL TRAVELERS' SAMPLES, AND TOOLS OF TRADE

10.68 Procedure.
10.69 Samples to Great Britain and Ireland under reciprocal agreement.

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10.70 Purebred animals for breeding purposes; certificate.
10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.
10.72–10.73 [Reserved]
10.74 Animals straying across boundary for pasturage; offspring.
10.75 Wild animals and birds; zoological collections.
10.76 Game animals and birds.
10.77 [Reserved]

PRODUCTS OF AMERICAN FISHERIES

10.78 Entry.
10.79 [Reserved]

SALT FOR CURING FISH

10.80 Remission of duty; withdrawal; bond.
10.81 Use in any port.
10.82 [Reserved]
10.83 Bond; cancellation; extension.

AUTOMOTIVE PRODUCTS

10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

MASTER RECORDS, AND METAL MATRICES

10.90 Master records and metal matrices.

PROTOTYPES

10.91 Prototypes used exclusively for product development and testing.
10.92–10.97 [Reserved]

FLUXING MATERIAL

10.98 Copper-bearing fluxing material.

ETHYL ALCOHOL

10.99 Importation of ethyl alcohol for non-beverage purposes.

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10.100 Entry, examination, and tariff status.
10.101 Immediate delivery.
10.102 Duty-free entries.
10.103 American goods returned.
10.104 Temporary importation entries for United States Government agencies.

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10.106 [Reserved]

RESCUE AND RELIEF WORK

10.107 Equipment and supplies; admission.

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10.108 Entry of reimported articles exported under lease.

STRATEGIC MATERIALS OBTAINED BY BARTER OR EXCHANGE

10.110 [Reserved]

LATE FILING OF FREE ENTRY AND REDUCED DUTY DOCUMENTS

10.112 Filing free entry documents or reduced duty documents after entry.

INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

10.114 General provisions.
10.115–10.119 [Reserved]

VISUAL OR AUDITORY MATERIALS

10.121 Visual or auditory materials of an educational, scientific, or cultural character.

RATE OF DUTY DEPENDENT UPON ACTUAL USE

10.131 Circumstances in which applicable.
10.132 [Reserved]
10.133 Conditions required to be met.
10.134 Declaration of intent.
10.135 Deposit of duties.
10.136 Suspension of liquidation.
10.137 Records of use.
10.138 Proof of use.
10.139 Liquidation.

IMPORTATIONS NOT OVER $200 AND BONA FIDE GIFTS

10.151 Importations not over $200.
10.152 Bona-fide gifts.
10.153 Conditions for exemption.

GENERALIZED SYSTEM OF PREFERENCES

10.171 General.
10.172 Claim for exemption from duty under the Generalized System of Preferences.
10.173 Evidence of country of origin.
10.174 Evidence of direct shipment.
10.175 Imported directly defined.
10.176 Country of origin criteria.
10.177 Cost or value of materials produced in the beneficiary developing country.
10.178 Direct costs of processing operations performed in the beneficiary developing country.
10.178a Special duty-free treatment for sub-Saharan African countries.

CANADIAN CRUDE PETROLEUM

10.179 Canadian crude petroleum subject to a commercial exchange agreement between United States and Canadian refiners.

CERTAIN FRESH, CHILLED, OR FROZEN BEEF

10.180 Certification.

WATCHES AND WATCH MOVEMENTS FROM U.S. INSULAR POSSESSIONS

10.181–10.182 [Reserved]

CIVIL AIRCRAFT

10.183 Duty-free entry of civil aircraft, aircraft engines, ground flight simulators, parts, components, and subassemblies.

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10.191 General.
10.192 Claim for exemption from duty under the CBI.
10.193 Imported directly.
10.194 Evidence of direct shipment.
10.195 Country of origin criteria.
10.196 Cost or value of materials produced in a beneficiary country or countries.
10.197 Direct costs of processing operations performed in a beneficiary country or countries.
10.198 Evidence of country of origin.
10.198a Duty reduction for certain leather-related articles.
10.198b Products of Puerto Rico processed in a beneficiary country.
10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

Subpart C—Andean Trade Preference

10.201 Applicability.
10.202 Definitions.
10.203 Eligibility criteria in general.
10.204 Imported directly.
10.205 Country of origin criteria.
10.206 Value content requirement.

10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

Subpart D—Textile and Apparel Articles Under the African Growth and Opportunity Act

10.211 Applicability.
10.212 Definitions.
10.213 Articles eligible for preferential treatment.
10.214 Certificate of Origin.
10.215 Filing of claim for preferential treatment.
10.216 Maintenance of records and submission of Certificate by importer.
10.217 Verification and justification of claim for preferential treatment.

Subpart E—United States-Caribbean Basin Trade Partnership Act

TEXTILE AND APPAREL ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

10.221 Applicability.
10.222 Definitions.
10.223 Articles eligible for preferential treatment.
10.224 Certificate of Origin.
10.225 Filing of claim for preferential treatment.
10.226 Maintenance of records and submission of Certificate by importer.
10.227 Verification and justification of claim for preferential treatment.
10.228 Additional requirements for preferential treatment of brassieres.

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10.231 Applicability.
10.232 Definitions.
10.233 Articles eligible for preferential tariff treatment.
10.234 Certificate of Origin.
10.235 Filing of claim for preferential tariff treatment.
10.236 Maintenance of records and submission of Certificate by importer.
10.237 Verification and justification of claim for preferential tariff treatment.

Subpart F—Andean Trade Promotion and Drug Eradication Act

APPAREL AND OTHER TEXTILE ARTICLES UNDER THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

10.241 Applicability.
10.242 Definitions.
10.243 Articles eligible for preferential treatment.
10.244 Certificate of Origin.
10.245 Filing of claim for preferential treatment.
10.246 Maintenance of records and submission of Certificate by importer.
10.247 Verification and justification of claim for preferential treatment.
10.248 Additional requirements for preferential treatment of brassieres.

EXTENSION OF ATPA BENEFITS TO TUNA AND CERTAIN OTHER NON-TEXTILE ARTICLES

10.251 Applicability.
10.252 Definitions.
10.253 Articles eligible for preferential treatment.
10.254 Certificate of Origin.
10.255 Filing of claim for preferential treatment.
10.256 Maintenance of records and submission of Certificate by importer.
10.257 Verification and justification of claim for preferential treatment.

Subpart G—United States-Canada Free Trade Agreement

10.301 Scope and applicability.
10.302 Eligibility criteria in general.
10.303 Originating goods.
10.304 Exclusions.
10.305 Value content requirement.
10.306 Direct shipment to the United States.
10.307 Documentation.
10.308 Records retention.
10.309 Verification of documentation.
10.310 Election to average for motor vehicles.
10.311 Documentation for election to average for motor vehicles.

Subpart H—United States-Chile Free Trade Agreement

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10.401 Scope.
10.402 General definitions.

IMPORT REQUIREMENTS

10.410 Filing of claim for preferential tariff treatment upon importation.
10.411 Certification of origin or other information.
10.412 Importer obligations.
10.413 Validity of certification.
10.414 Certification or other information not required.
10.415 Maintenance of records.
10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

TARIFF PREFERENCE LEVEL

10.420 Filing of claim for tariff preference level.
10.421 Goods eligible for tariff preference claims.

10.422 Submission of certificate of eligibility.
10.423 Certificate of eligibility not required.
10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.
10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

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10.430 Export requirements.
10.431 Failure to comply with requirements.

POST-IMPORTATION DUTY REFUND CLAIMS

10.440 Right to make post-importation claim and refund duties.
10.441 Filing procedures.
10.442 CBP processing procedures.

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10.450 Definitions.
10.451 Originating goods.
10.452 Exclusions.
10.453 Treatment of textile and apparel sets.
10.454 Regional value content.
10.455 Value of materials.
10.456 Accessories, spare parts or tools.
10.457 Fungible goods and materials.
10.458 Accumulation.
10.459 De minimis.
10.460 Indirect materials.
10.461 Retail packaging materials and containers.
10.462 Packing materials and containers for shipment.
10.463 Transit and transshipment.

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10.470 Verification and justification of claim for preferential treatment.
10.471 Special rule for verification in Chile of U.S. imports of textile and apparel products.
10.472 Verification in the United States of textile and apparel goods.
10.473 Issuance of negative origin determinations.
10.474 Repeated false or unsupported preference claims.

PENALTIES

10.480 General.
10.481 Corrected declaration by importers.
10.482 Corrected certification of origin by exporters or producers.
10.483 Framework for correcting declarations and certifications.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.490 Goods re-entered after repair or alteration in Chile.

Subpart I—United States-Singapore Free Trade Agreement

GENERAL PROVISIONS

10.501 Scope.
10.502 General definitions.

IMPORT REQUIREMENTS

10.510 Filing of claim for preferential tariff treatment upon importation.
10.511 Supporting statement.
10.512 Importer obligations.
10.513 Supporting statement not required.
10.514 Maintenance of records.
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TARIFF PREFERENCE LEVEL

10.520 Filing of claim for tariff preference level.
10.521 Goods eligible for tariff preference level claims.
10.522 Submission of certificate of eligibility.

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10.530 Definitions.
10.531 Originating goods.
10.532 Integrated Sourcing Initiative.
10.533 De minimis.
10.534 Accumulation.
10.535 Regional value content.
10.536 Value of materials.
10.537 Accessories, spare parts, or tools.
10.538 Fungible goods and materials.
10.539 Retail packaging materials and containers.
10.540 Packing materials and containers for shipment.
10.541 Indirect materials.
10.542 Third country transportation.
10.543 Certain apparel goods made from fabric or yarn not available in commercial quantities.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.550 Verification and justification of claim for preferential treatment.
10.551 Issuance of negative origin determinations.
10.552 Information sharing by CBP regarding textile and apparel goods produced in the United States.
10.553 Textile and apparel site visits.
10.554 Exclusion of textile or apparel goods for intentional circumvention.

PENALTIES

10.560 General.
10.561 Corrected claim or supporting statement.
10.562 Framework for correcting claims or supporting statements.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.570 Goods re-entered after repair or alteration in Singapore.

Subpart J—Dominican Republic-Central America-United States Free Trade Agreement

GENERAL PROVISIONS

10.581 Scope.
10.582 General definitions.

IMPORT REQUIREMENTS

10.583 Filing of claim for preferential tariff treatment upon importation.
10.584 Certification.
10.585 Importer obligations.
10.586 Certification not required.
10.587 Maintenance of records.
10.588 Effect of noncompliance; failure to provide documentation regarding transshipment.

EXPORT REQUIREMENTS

10.589 Certification for goods exported to a Party.

POST-IMPORTATION DUTY REFUND CLAIMS

10.590 Right to make post-importation claim and refund duties.
10.591 Filing procedures.
10.592 CBP processing procedures.

RULES OF ORIGIN

10.593 Definitions.
10.594 Originating goods.
10.595 Regional value content.
10.596 Value of materials.
10.597 Accumulation.
10.598 De minimis.
10.599 Fungible goods and materials.
10.600 Accessories, spare parts, or tools.
10.601 Retail packaging materials and containers.
10.602 Packing materials and containers for shipment.
10.603 Indirect materials.
10.604 Transit and transshipment.
10.605 Goods classifiable as goods put up in sets.

TARIFF PREFERENCE LEVEL

10.606 Filing of claim for tariff preference level.
10.607 Goods eligible for tariff preference level claims.
10.608 Submission of certificate of eligibility for certain apparel goods of Nicaragua.
10.609 Transshipment of non-originating cotton or man-made fiber apparel goods.
10.610 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber apparel goods.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.616 Verification and justification of claim for preferential tariff treatment.
10.617 Special rule for verifications in a Party of U.S. imports of textile and apparel goods.
10.618 Issuance of negative origin determinations.
10.619 Repeated false or unsupported preference claims.

PENALTIES

10.620 General.
10.621 Corrected claim or certification by importers.
10.622 Corrected certification by exporters or producers.
10.623 Framework for correcting claims or certifications.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.624 Goods re-entered after repair or alteration in a Party.

RETROACTIVE PREFERENTIAL TARIFF TREATMENT FOR TEXTILE AND APPAREL GOODS

10.625 Refunds of excess customs duties.

Subpart K—United States-Jordan Free Trade Agreement

GENERAL PROVISIONS

10.701 Scope.
10.702 Definitions.

IMPORT REQUIREMENTS

10.703 Filing of claim for preferential tariff treatment.
10.704 Declaration.
10.705 Importer obligations.
10.706 Declaration not required.
10.707 Maintenance of records.
10.708 Effect of noncompliance; failure to provide documentation regarding third-country transportation.

RULES OF ORIGIN

10.709 Country of origin criteria.
10.710 Value-content requirement.
10.711 Imported directly.

ORIGIN VERIFICATIONS

10.712 Verification of claim for preferential tariff treatment.

Subpart L—United States-Australia Free Trade Agreement

GENERAL PROVISIONS

10.721 Scope.

10.722 General definitions.

IMPORT REQUIREMENTS

10.723 Filing of claim for preferential tariff treatment upon importation.
10.724 Supporting statement.
10.725 Importer obligations.
10.726 Supporting statement not required.
10.727 Maintenance of records.
10.728 Effect of noncompliance; failure to provide documentation regarding third country transportation.

RULES OF ORIGIN

10.729 Definitions.
10.730 Originating goods.
10.731 Textile and apparel goods classifiable as goods put up in sets.
10.732 De minimis.
10.733 Accumulation.
10.734 Regional value content.
10.735 Value of materials.
10.736 Accessories, spare parts, or tools.
10.737 Fungible goods and materials.
10.738 Retail packaging materials and containers.
10.739 Packing materials and containers for shipment.
10.740 Indirect materials.
10.741 Third country transportation.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.742 Verification and justification of claim for preferential treatment.
10.743 Special rule for verifications in Australia of U.S. imports of textile and apparel goods.
10.744 Issuance of negative origin determinations.

PENALTIES

10.745 General.
10.747 Framework for correcting claims or supporting statements.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.748 Goods re-entered after repair or alteration in Australia.

Subpart M—United States-Morocco Free Trade Agreement

GENERAL PROVISIONS

10.761 Scope.
10.762 General definitions.

IMPORT REQUIREMENTS

10.763 Filing of claim for preferential tariff treatment upon importation.
10.764 Declaration.
10.765 Importer obligations.
10.766 Declaration not required.
10.767 Maintenance of records.
10.768 Effect of noncompliance; failure to provide documentation regarding transshipment.

RULES OF ORIGIN

10.769 Definitions.
10.770 Originating goods.
10.771 Textile or apparel goods.
10.772 Accumulation.
10.773 Value of materials.
10.774 Direct costs of processing operations.
10.775 Packaging and packing materials and containers for retail sale and for shipment.
10.776 Indirect materials.
10.777 Imported directly.

TARIFF PREFERENCE LEVEL

10.778 Filing of claim for tariff preference level.
10.779 Goods eligible for tariff preference claims.
10.780 Transshipment of non-originating fabric or apparel goods.
10.781 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.784 Verification and justification of claim for preferential treatment.
10.785 Issuance of negative origin determinations.

PENALTIES

10.786 Violations relating to the MFTA.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.787 Goods re-entered after repair or alteration in Morocco.

Subpart N—United States-Bahrain Free Trade Agreement

GENERAL PROVISIONS

10.801 Scope.
10.802 General definitions.

IMPORT REQUIREMENTS

10.803 Filing of claim for preferential tariff treatment upon importation.
10.804 Declaration.
10.805 Importer obligations.
10.806 Declaration not required.
10.807 Maintenance of records.
10.808 Effect of noncompliance; failure to provide documentation regarding transshipment.

RULES OF ORIGIN

10.809 Definitions.
10.810 Originating goods.
10.811 Textile or apparel goods.

10.812 Accumulation.
10.813 Value of materials.
10.814 Direct costs of processing operations.
10.815 Packaging and packing materials and containers for retail sale and for shipment.
10.816 Indirect materials.
10.817 Imported directly.

TARIFF PREFERENCE LEVEL

10.818 Filing of claim for tariff preference level.
10.819 Goods eligible for tariff preference claims.
10.820 Certificate of eligibility.
10.821 Declaration.
10.822 Transshipment of non-originating fabric or apparel goods.
10.823 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.824 Verification and justification of claim for preferential treatment.
10.825 Issuance of negative origin determinations.

PENALTIES

10.826 Violations relating to the BFTA.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.827 Goods re-entered after repair or alteration in Bahrain.

Subpart O—Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 and 2008

10.841 Applicability.
10.842 Definitions.
10.843 Articles eligible for duty-free treatment.
10.844 Value-content requirement.
10.845 Retroactive application of duty-free treatment for certain apparel articles.
10.846 Imported directly.
10.847 Filing of claim for duty-free treatment.
10.848 Declaration of compliance.
10.849 Importer obligations.
10.850 Verification of claim for duty-free treatment.

Subpart P—United States-Oman Free Trade Agreement

GENERAL PROVISIONS

10.861 Scope.
10.862 General definitions.

IMPORT REQUIREMENTS

10.863 Filing of claim for preferential tariff treatment upon importation.
10.864 Declaration.
10.865 Importer obligations.
10.866 Declaration not required.
10.867 Maintenance of records.
10.868 Effect of noncompliance; failure to provide documentation regarding transshipment.

POST-IMPORTATION DUTY REFUND CLAIMS

10.869 Right to make post-importation claim and refund duties.
10.870 Filing procedures.
10.871 CBP processing procedures.

RULES OF ORIGIN

10.872 Definitions.
10.873 Originating goods.
10.874 Textile or apparel goods.
10.875 Accumulation.
10.876 Value of materials.
10.877 Direct costs of processing operations.
10.878 Packaging and packing materials and containers for retail sale and for shipment.
10.879 Indirect materials.
10.880 Imported directly.

TARIFF PREFERENCE LEVEL

10.881 Filing of claim for tariff preference level.
10.882 Goods eligible for tariff preference claims.
10.883 [Reserved]
10.884 Declaration.
10.885 Transshipment of non-originating apparel goods.
10.886 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating apparel goods.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.887 Verification and justification of claim for preferential treatment.
10.888 Issuance of negative origin determinations.

PENALTIES

10.889 Violations relating to the OFTA.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.890 Goods re-entered after repair or alteration in Oman.

Subpart Q—United States-Peru Trade Promotion Agreement

GENERAL PROVISIONS

10.901 Scope.
10.902 General definitions.

IMPORT REQUIREMENTS

10.903 Filing of claim for preferential tariff treatment upon importation.
10.904 Certification.
10.905 Importer obligations.
10.906 Certification not required.
10.907 Maintenance of records.
10.908 Effect of noncompliance; failure to provide documentation regarding transshipment.

EXPORT REQUIREMENTS

10.909 Certification for goods exported to Peru.

POST-IMPORTATION DUTY REFUND CLAIMS

10.910 Right to make post-importation claim and refund duties.
10.911 Filing procedures.
10.912 CBP processing procedures.

RULES OF ORIGIN

10.913 Definitions.
10.914 Originating goods.
10.915 Regional value content.
10.916 Value of materials.
10.917 Accumulation.
10.918 De minimis.
10.919 Fungible goods and materials.
10.920 Accessories, spare parts, or tools.
10.921 Goods classifiable as goods put up in sets.
10.922 Retail packaging materials and containers.
10.923 Packing materials and containers for shipment.
10.924 Indirect materials.
10.925 Transit and transshipment.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.926 Verification and justification of claim for preferential tariff treatment.
10.927 Special rule for verifications in Peru of U.S. imports of textile and apparel goods.
10.928 Issuance of negative origin determinations.
10.929 Repeated false or unsupported preference claims.

PENALTIES

10.930 General.
10.931 Corrected claim or certification by importers.
10.932 Corrected certification by U.S. exporters or producers.
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10.1034 Goods re-entered after repair or alteration in Korea.

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10.2030 General.
10.2031 Corrected claim or certification by importers.
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10.3019 Fungible goods and materials.
10.3020 Accessories, spare parts, or tools.
10.3021 Goods classifiable as goods put up in sets.
10.3022 Retail packaging materials and containers.
10.3023 Packing materials and containers for shipment.
10.3024 Indirect materials.
10.3025 Transit and transshipment.

ORIGIN VERIFICATIONS AND DETERMINATIONS

10.3026 Verification and justification of claim for preferential tariff treatment.
10.3027 Special rule for verifications in Colombia of U.S. imports of textile and apparel goods.

10.3028 Issuance of negative origin determinations.
10.3029 Repeated false or unsupported preference claims.

PENALTIES

10.3030 General.
10.3031 Corrected claim or certification by importers.
10.3032 Corrected certification by exporters or producers.
10.3033 Framework for correcting claims or certifications.

GOODS RETURNED AFTER REPAIR OR ALTERATION

10.3034 Goods re-entered after repair or alteration in Colombia.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

Section 10.17 also issued under 19 U.S.C. 1401a, 1402;

Sections 10.25 and 10.26 also issued under 19 U.S.C. 3592;

Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, HTSUS);

Section 10.53 also issued under 16 U.S.C. 1521, *et seq.;*

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

Sections 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

Sections 10.62a, 10.65 also issued under 19 U.S.C. 1309, 1317, 1555, 1556, 1557, 1646a;

§ 10.62b also issued under 19 U.S.C. 1557;

Sections 10.70, 10.71 also issued under 19 U.S.C. 1486;

Sections 10.80, 10.81, 10.82, 10.83 also issued under 19 U.S.C. 1313 (e) and (i);

Section 10.91 also issued under Pub. L. 106–476 (114 Stat. 2101), sections 1434, 1435;

Section 10.121 also issued under 19 U.S.C. 2501.

Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 *et seq.;*

Section 10.183 also issued under 19 U.S.C. 1202 (General Note 6, HTSUS);

Sections 10.191 through 10.199 also issued under 19 U.S.C. 2701 *et seq.;*

Sections 10.201 through 10.207 also issued under 19 U.S.C. 3203;

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

Sections 10.401 through 10.490 also issued under Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note).

Sections 10.501 through 10.570 also issued under 19 U.S.C. 1202 (General Note 25, HTSUS) and Pub. L. 108–78, 117 Stat. 948 (19 U.S.C. 3805 note).

Sections 10.581 through 10.625 also issued under 19 U.S.C. 1202 (General Note 29, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 note).

Section 10.699 also issued under Pub. L. 109–53, 119 Stat. 462.

Sections 10.701 through 10.712 also issued under 19 U.S.C. 1202 (General Note 18, HTSUS) and Pub. L. 107–43, 115 Stat. 243 (19 U.S.C. 2112 note).

Sections 10.721 through 10.748 also issued under 19 U.S.C. 1202 (General Note 28, HTSUS) and Pub. L. 108–286, 118 Stat. 919 (19 U.S.C. 3805 note).

Sections 10.761 through 10.789 also issued under Pub. L. 108–302, 118 Stat. 1103 (19 U.S.C. 3805 note).

Sections 10.801 through 10.829 also issued under 19 U.S.C. 1202 (General Note 30, HTSUS) and Pub. L. 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

Sections 10.841 through 10.850 also issued under 19 U.S.C. 2703A.

Sections 10.861 through 10.890 also issued under 19 U.S.C. 1202 (General Note 31, HTSUS) and Pub. L. 109–283, 120 Stat. 1191 (19 U.S.C. 3805 note).

Sections 10.901 through 10.934 also issued under 19 U.S.C. 1202 (General Note 32, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note).

Sections 10.1001 through 10.1034 also issued under 19 U.S.C. 1202 (General Note 33, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–41, 125 Stat. 428 (19 U.S.C. 3805 note).

Sections 10.2001 through 10.2034 also issued under 19 U.S.C. 1202 (General Note 35, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–43, 125 Stat. 497 (19 U.S.C. 3805 note).

Sections 10.3001 through 10.3034 also issued under 19 U.S.C. 1202 (General Note 34, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–42, 125 Stat. 462 (19 U.S.C. 3805 note).

SOURCE: 28 FR 14663, Dec. 31, 1963, unless otherwise noted.

Subpart A—General Provisions

ARTICLES EXPORTED AND RETURNED

§ 10.1 Domestic products; requirements on entry.

(a) Except as otherwise provided for in paragraph (g), (h), (i) or (j) of this section or elsewhere in this part or in § 145.35 of this chapter, the following documents must be filed in connection with the entry of articles in a shipment

valued over $2,500 and claimed to be free of duty under subheading 9801.00.10 or 9802.00.20, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the foreign shipper in substantially the following form:

I, _____,

declare that to the best of my knowledge and belief the articles herein specified were exported from the United States, from the port of _____ on or about _____, 20___, and that they are returned without having been advanced in value or improved in condition by any process of manufacture or other means.

Marks	Number	Quantity	Description	Value, in U.S. coin
	.... (Date) ..... (Address)	....

duty unless such articles would be dutiable if not products of the U.S. under General Rule of Interpretation 5, HTSUS.

(f) In the case of photographic films and dry plates manufactured in the United States (except motion picture films to be used for commercial purposes) exposed abroad and entered under subheading 9802.00.20, HTSUS, the requirements of paragraphs (a) and (c) of this section are applicable except that the declaration by the foreign shipper provided for in paragraph (a)(1) to the effect that the articles ''are returned without having been advanced in value or improved in condition by any process of manufacture or other means'' must be crossed out, and the entrant must show on the declaration provided for in paragraph (a)(2) that the subject articles when exported were of U.S. manufacture and are returned after having been exposed, or exposed and developed, and, in the case of motion picture films, that they will not be used for commercial purposes.

(g) *Aircraft and aircraft parts and equipment*. (1) In the case of aircraft and aircraft parts and equipment returned to the United States under subheading 9801.00.10, HTSUS, by or for the account of an aircraft owner or operator and intended for use in his own aircraft operations, within or outside the United States, the entry summary may be made on CBP Form 3311. The entry summary on CBP Form 3311 must be executed by the entrant and supported by the entry documentation required by §142.3 of this chapter. If the CBP officer is satisfied that the articles are products of the United States, that they have not been improved in condition or advanced in value while abroad, and that no drawback has been or will be paid, the other documents described in this section will not be required, and no bond need be filed for their production.

(2) The entrant must show on CBP Form 3311:

(i) The name and address of the aircraft owner or operator by whom or for whose account the articles are returned to the United States, in the block headed ''Articles Returned To (Name and Address)'',

(ii) The name of the importing vessel or conveyance,

(iii) The date of its arrival,

(iv) A description of the articles,

(v) The value of the articles, and

(vi) That the articles are intended for use by the aircraft owner or operator in his own aircraft operations.

(3) If CBP Form 3311 is filed at time of entry, it will serve as both the entry and the entry summary.

(h) *Nonconsumable vessel stores and equipment*. (1) In the case of nonconsumable vessel stores and equipment returned to the United States under subheading 9801.00.10, HTSUS, the entry summary may be made on Customs Form 3311. The entry summary on CBP Form 3311 must be executed in duplicate by the entrant and supported by the entry documentation required by §142.3 of this chapter. Before an entry summary on CBP Form 3311 may be accepted for nonconsumable vessel stores and equipment, the CBP officer must be satisfied that:

(i) The articles are products of the United States.

(ii) The articles have not been improved in condition or advanced in value while abroad.

(iii) No drawback has been or will be paid, and

(iv) No duty equal to an internal revenue tax is payable under subheading 9801.00.80, HTSUS.

(2) The documentation described in paragraph (a) of this section will not be required in connection with an entry for nonconsumable vessel stores and equipment on CBP Form 3311.

(3) To satisfy the CBP officer that no drawback has been or will be paid on the articles in connection with their removal from the United States, the master of the vessel or other person having knowledge of the facts must furnish a written declaration which may be made on the reverse side of CBP Form 3311 showing that the articles were:

(i) Exported as stores or equipment on a United States vessel or a vessel operated by the United States Government,

(ii) Not landed in a foreign country, except for any needed repairs, adjustments, or refilling and return to the vessel from which landed or,

(iii) For transshipment as stores or equipment to another vessel.

(4) The entrant also must show:

(i) The name of the importing vessel,

(ii) The date of its arrival,

(iii) A description of the articles, and

(iv) The value of the articles.

(5) If CBP Form 3311 is filed at time of entry, it will serve as both the entry and the entry summary.

(i) When the total value of articles of claimed American origin contained in any shipment does not exceed $250 and such articles are found to be unquestionably products of the United States and do not appear to have been advanced in value or improved in condition while abroad and no quota is involved, free entry thereof may be made under subheading 9801.00.10 on CBP Form 3311, executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the CBPofficer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The entrant must show on Customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles. The entrant must also produce evidence of his right to make entry (except as provided in §141.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311.

(j) In the case of products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration, prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit, free entry thereof may be made under subheading 9801.00.10, HTSUS, on CBP Form 3311 (a CBP Form 7501 must be submitted as well for such articles as provided in §143.23(h) of this chapter), executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the CBP officer has reason to believe that CBP drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The person making entry must show on CBP Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles. The person making entry must also produce evidence of his right to make entry (except as provided in §141.11(b) of this chapter). If the CBP officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a CBP Form 3311.

[T.D. 72–119, 37 FR 8867, May 2, 1972 as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; 43 FR 20003, May 10, 1978; T.D. 79–221, 44 FR 46812, Aug. 9, 1979; T.D. 83–82, 48 FR 14596, Apr. 5, 1983; T.D. 89–1, 53 FR 51246, Dec. 21, 1988; T.D. 94–47, 59 FR 25566, May 17, 1994; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; T.D. 98–28, 63 FR 16416, Apr. 3, 1998; 77 FR 72718, Dec. 6, 2012]

§ 10.3 Drawback; internal-revenue tax.

(a) Except as prescribed in §10.1(f) or in paragraphs (c) and (f) of this section, no free entry shall be allowed under Chapter 98, Subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS), in the final liquidation of an entry unless the port director is satisfied by the certificate of exportation or other evidence or information that no drawback was allowed in connection with the exportation from the United States, and unless no internal-revenue tax is imposed on the importation of like articles not previously exported from the United States or, if such tax is being imposed at the time of entry

for consumption or withdrawal from warehouse for consumption, the port director is satisfied that an internal-revenue tax on production or importation was paid in respect of the imported article before it was exported from the United States and was not refunded. Except as provided for in § 10.1(f), when it is impracticable, because of the destruction of Customs records or other circumstances, to determine whether drawback was allowed, or the amount of drawback allowed, with respect to an article established to be a returned product of the United States which has not been advanced in value or improved in condition while abroad, there shall be assessed on the returned article an amount of duty determined as follows:

(1) If there is any likelihood that drawback was allowable on the exportation of like articles at any time when the imported article may have been exported from the United States, the estimated amount of any drawback which would have been allowable if duty had been paid on any foreign merchandise likely to have been used in the manufacture of the returned article at the rate or rates applicable to such foreign merchandise on the date of importation of the returned article (see paragraph (b) of this section), and

(2) If there is any likelihood that a refund or remission of tax was allowed on the exportation of the returned article, the amount of any internal-revenue tax which would be payable at the time of importation if the returned article were wholly of foreign origin, but in no such case shall there be assessed more than an amount equal to the duty and tax that would apply if the returned article were wholly of foreign origin and originally imported. (See § 10.7(a).) Except as provided for in § 10.1(f), if the imported article is of a kind which would be subject to an internal-revenue tax if of foreign origin and payment of an internal-revenue tax before exportation without refund thereof is not established, duty shall be assessed on the imported article in an amount equal to the internal-revenue tax imposed at the time of entry for consumption or withdrawal from warehouse for consumption on like articles of foreign origin, plus the amount of any drawback allowed on the exportation of the article from the United States; but if no drawback was allowed, the duty equal to internal-revenue tax shall be the total duty to be assessed. If an allowance of drawback on the exportation from the United States of the imported article is established, duty shall be assessed in an amount equal to such drawback, plus an amount equal to any internal-revenue tax which may be assessable in accordance with this paragraph; but in no case shall duty equal to drawback, or to drawback and internal-revenue tax, be assessed in an amount in excess of the ordinary Customs duty and internal-revenue tax applicable to like articles of foreign origin. In any case, where payment of internal-revenue tax before exportation without refund thereof is established, no duty equal to an internal-revenue tax currently in force shall be assessed.

(b) In the absence of satisfactory evidence as to the nonallowance of drawback or the amount thereof allowed on the following articles of American manufacture or production, duty shall be assessed thereon in the amounts respectively indicated, the amount shown in each case being considered the fair average amount of drawback allowed on such articles:

Article	Duty assessment
Drums, metal (when not exempted from duty in accordance with sec. 10.3(c)).	24 cents each.
Hosiery, nylon	45 cents per dozen.
Lead compound, tetraethyl	$0.003 per kilogram.
Lithopone	$0.00065 per kilogram.
Oxide, zinc	$0.0029 per kilogram.
Piece goods, cotton:	
Bleached	$0.03199 per square meter.
Dyed	$0.03454 per square meter.
Printed	$0.03226 per square meter.
Piece goods, nylon: Dyed	$0.29086 per square meter.
Piece goods, rayon:	
Printed	$0.04867 per square meter.
Other than printed (white, piece dyed or yarn dyed).	$0.08478 per square meter.
Tallow, refined, inedible	$0.003 per kilogram.

(c) The following articles shall be admitted free of duty, even though exported from the United States with benefit of drawback:

(1) Any article of a kind which would be admitted free of duty otherwise

than under Chapter 98, Subchapter 1, HTSUS, if of foreign origin;

(2) Substantial containers or holders of domestic manufacture, including shooks and staves when returned as boxes or barrels, when in use at the time of importation as the usual containers of merchandise;

(3) Any article provided for in subheadings 9801.00.70 or 9801.00.80, HTSUS, with respect to which the port director has determined that the collection of duty under such subheadings 9801.00.70 or 9801.00.80, HTSUS, would involve an expense and inconvenience to the Government disproportionate to the probable amount of such duty; and

(4) Other articles of domestic manufacture which are in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty, and which have not been advanced in value or improved in condition while abroad by any process of manufacture or other means.

(d) Articles manufactured or produced in the United States in a Customs bonded warehouse and exported shall be subject on reimportation to a duty equal to the total duty and internal-revenue tax, if any, imposed at the time of entry for consumption or withdrawal from warehouse for consumption with respect to the importation of like articles not previously exported from the United States.

(e) Animals straying across the border or driven across the border for pasturage purposes or for feeding to improve them for the market and not returned within 8 months are excluded from free entry as domestic products returned.

(f) Tobacco products and cigarette papers and tubes classifiable under subheading 9801.00.80, HTSUS, may be released from customs custody without the payment of that part of the duty attributable to the internal-revenue tax for return to internal-revenue bond as provided by section 5704(d) of the Internal Revenue Code of 1954.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–104, 33 FR 5616, Apr. 11, 1968; T.D. 83–240, 48 FR 53098, Nov. 25, 1983; T.D. 89–1, 53 FR 51246, Dec. 21, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 10.4 Internal-revenue marks; erasure.

Internal-revenue brands or marks on casks or other containers previously exported from the United States must be erased at the importer's expense under Customs supervision before their delivery from Customs custody.

§ 10.5 Shooks and staves; cloth boards; port director's account.

(a) Shooks and staves produced in the United States and returned in the form of complete boxes or barrels in use as the usual containers of merchandise are exempt from any duties imposed by the tariff laws upon similar containers made of foreign shooks or staves, provided their identity is established under the regulations in this part.

(b) The term ''shook'' embraces only shooks which at the time of exportation from this country are ready to be assembled into boxes or barrels without further cutting to size; except that box shooks may be exported in double lengths and cut abroad. The number of boxes made from such shooks which may be imported into this country free of duty cannot exceed the number of complete sets of shooks exported.

(c) [Reserved]

(d) An exporter of shooks or staves in respect of which free entry is to be claimed when returned as boxes or barrels shall file in triplicate with the director of the port of exportation, at least 6 hours before the landing of the articles on the exporting vessel, a Certificate of Registration, Customs Form 4455.

(e) The Certificate of Registration, CF 4455, shall be completed in triplicate by the port director after verification from the manifest of the exporting vessel and the return of the lading officer. The original shall be forwarded by the port director to the consignee. The duplicate copy shall be given to the exporter and the triplicate copy shall be retained.

(f) Whenever boxes or barrels alleged to have been manufactured from American shooks or staves are shipped to the United States from a person abroad other than the one to whom they were exported from the United States, the importer shall be required to obtain from the foreign consignee to whom

the shooks or staves were originally exported from this country the certificate or certificates, Customs Form 4455, covering the exportation of the shooks or staves from the United States, or an extract therefrom signed by such consignee, showing the number of shooks or staves covered by such certificate or certificates, together with the number of superficial feet of such shooks or staves. Such Form 4455, or extract therefrom, shall be filed by the importer in connection with the entry of the boxes or barrels.

(g) Accounts shall be kept by the director of the port of exportation of the shooks and staves as to each exportation thereof and as to the returns thereof in boxes, barrels, etc. Notifications of such returns shall be given to the port of exportation by the director of the port of importation. When returns in the form of boxes, barrels, etc., entirely account for the shooks and staves exported as shown on the appropriate Customs Form 4455, the port director maintaining the account shall so inform the port director making inquiry about the merchandise being imported and alleged to contain shooks or staves covered by the particular exportation.

(h) A record of cloth boards of domestic manufacture exported to be wrapped with foreign textiles shall be kept by the port director in a similar manner as for shooks and staves. Cloth boards of domestic manufacture are conditionally free of duty under Chapter 98, subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS). If such boards are advanced in value or improved in condition while abroad, free entry shall be denied on importation.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 89–1, 53 FR 51247, Dec. 21, 1988; T.D. 98–52, 63 FR 29954, June 2, 1998]

§ 10.6 Shooks and staves; claim for duty exemption.

An importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such a claim on Customs Form 4455 at the time of filing the entry. Upon receipt, from the director of the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such a claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the port director's notice to him of any disallowance, for referral of the question to the Commissioner of Customs for review.

[T.D. 87–75, 52 FR 20066, May 29, 1987, as amended by T.D. 98–52, 63 FR 29954, June 2, 1998]

§ 10.7 Substantial containers or holders.

(a) Substantial containers or holders, which are products of the United States, which are of the usual and ordinary types used in the shipment or transportation of goods, which are reusable for such purposes, and which are imported containing or holding merchandise, shall be entered under the general regulations governing the free entry of domestic products exported and returned. When such containers or holders are imported not containing or holding merchandise they may be admitted without entry if readily identifiable as products of the United States.

(b) Substantial containers or holders, which are of foreign production and previously imported duty paid, which are of the usual or ordinary types used in the shipment or transportation of goods, which are reusable for such purpose, and which are imported containing or holding merchandise, shall be exempt from duty if (1) exported in accordance with the regulations contained in § 10.5 (d) and (e), and (2) there is filed in connection with the entry a certificate of the foreign shipper in the form prescribed by paragraph (c) of this section.

(c) The certificate to be furnished by the foreign shipper for the use of the director of the port of entry shall be in the following form:

I, _____, of _____, do hereby certify that to the best of my knowledge and belief the substantial containers and holders mentioned in (the annexed invoice) (invoice No. _____ of _____, 19____) * are of the manufacture of _____ and were exported from the United States at the port of _____, per S.S.

_____ on _____, 19___, and that the same are being returned to the United States (empty) filled with _____) (holdings _____).*

_____
Shipper

(d) The port director, after verification of the foreign shipper's certificate with the records of the director of the port of exportation in this country, shall allow free entry to the extent the basis for such allowance is verified. The procedure in the last two sentences of § 10.6 shall be applicable.

(e) If claim for exemption from duty for such containers or holders of foreign production previously imported duty paid is made at the time of entry, the certificate of the foreign shipper may be accepted if produced at any time prior to the liquidation of the entry.

(f) When such containers or holders of foreign production previously imported duty paid are reimported empty, they may be admitted without entry if readily identifiable as having been previously imported duty paid.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 86–118, 51 FR 22515, June 20, 1986; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.8 Articles exported for repairs or alterations.

(a) Except as otherwise provided for in this section and except in the case of goods covered by § 181.64 of this chapter, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under subheading 9802.00.40 or 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I,_____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19___, from_____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that the full cost or (when no charge is made) value of such repairs or alterations are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see subchapter II, chapter 98, HTSUS)	Total value of articles after repairs or alterations

_____
(Date)

_____
(Address)

_____
(Signature)

_____
(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that such articles were exported from the United States for repairs or alterations and without benefit of drawback from _____ (port) on _____, 19___; and that the articles entered in their repaired or altered condition are the same articles that were exported on the above date and that are identified in the (above) (attached) declaration.

_____

* Cross out inapplicable words.

(Date)

_____
(Address)

_____
(Signature)

_____
(Capacity)

(b) The port director may require such additional documentation as is deemed necessary to prove actual exportation of the articles from the United States for repairs or alterations, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the port director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.40 or 9802.00.50, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The port director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.40 or 9802.00.50, HTSUS, shall be limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.

[T.D. 94–47, 59 FR 25567, May 17, 1994, as amended by T.D. 95–68, 60 FR 46361, Sept. 6, 1995]

§ 10.8a Imported articles exported and reimported.

(a) In addition to regular entry procedures, supplementary documentation is required in connection with duty-free entries under subheading 9801.00.25, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), of articles which were originally entered duty paid, removed from Customs custody, and subsequently exported, if:

(1) The articles were exported within 3 years after the date of the previous importation.

(2) The articles were not advanced in value or improved in condition by any process of manufacture or other means while abroad.

(3) The articles did not conform to sample or specifications abroad.

(4) The articles are reimported by or for the account of the person who imported them into and exported them from the United States.

(b) The following supplementary documents shall be filed in connection with the entry of articles claimed to be free of duty under subheading 9801.00.25, Harmonized Tariff Schedule of the United States:

(1) A declaration by the person abroad who received and is returning the merchandise to the United States, in substantially the following form:

I declare that the _____ (Description of articles) were received by me from _____ (Name and address of U.S. exporter), that they have not been advanced in value or improved in condition by any process of manufacture or other means and are being returned to _____ (Name and address of consignee in the United States) because they do not conform to sample or specifications for the following reasons:

_____
_____
_____
_____
(Date) (Signature)

_____
(Address) (Title)

(2) A declaration by the owner, importer, consignee, or agent, in substantially the following form:

I declare that the _____ (Description of articles) were previously imported into the United States at the Port of _____ (Name of port), Entry No._____, on _____ (Date of entry) by _____ (Name and address of importer) at which time duty was paid; that they were exported from the United States at the Port of _____ (Name of port) on _____ (Date of exportation) by _____ (Name and address of exporter) without benefit of drawback; that the articles are being reimported by or

for the account of _____, and, that the attached declaration from _____ (Name of foreign shipper) is correct in every respect.

_____
(Date) (Signature)

_____
(Address) (Title)

(c) If the port director concerned is reasonably satisfied because of the nature of the articles or production of other evidence that the requirements of subheading 9801.00.25, Harmonized Tariff Schedule of the United States, and the related section and additional U.S. notes have been met, he may waive the production of the documents provided for in paragraph (b) of this section.

[T.D. 72–221, 37 FR 17469, Aug. 29, 1972, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.9 Articles exported for processing.

(a) Except as otherwise provided for in this section, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for further processing and which are claimed to be subject to duty only on the value of the processing performed abroad under subheading 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the person who performed the processing abroad, in substantially the following form:

I, _____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19 _____, from _____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being processed; that only the processing described below was effected by me (us); that the full cost or (when no charge is made) value of such processing and the value of the articles after processing are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of processing	Full cost or (when no charge is made) value of processing (see subchapter II, chapter 98, HTSUS)	Total value of articles after processing

_____
(Date)

_____
(Address)

_____
(Signature)

_____
(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the processing abroad is true and correct to the best of my knowledge and belief; that the articles were manufactured in the United States by _____ (name and address) or, if of foreign origin, were subjected to _____ (show processes of manufacture, such as molding, casting, machining) in the United States by _____ (name and address); that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that the articles were exported for processing and without benefit of drawback from _____ (port) on _____, 19 _____; that the articles entered in their processed condition are otherwise the same articles that were exported on the above date and that are identified in the (above) (attached) declaration; and that the returned articles will be subjected to _____ (describe processing to be performed in the United States) by _____ (name and address of U.S. processor). _____

_____
(Date)

_____
(Address)

_____
(Signature)

_____
(Capacity)

(b) The port director may require such additional documentation as is

deemed necessary to prove actual exportation of the articles from the United States for processing, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the port director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.60, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The port director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the processing. The cost or value of the processing outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.60, HTSUS, shall be limited to the cost or value of the processing actually performed abroad, which will include all domestic and foreign articles used in the processing but shall not include the exported United States metal article or any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the processing abroad, or otherwise.

[T.D. 94–47, 59 FR 25568, May 17, 1994]

§ 10.10 [Reserved]

ARTICLES ASSEMBLED ABROAD WITH UNITED STATES COMPONENTS

§ 10.11 General.

(a) Sections 10.12 through 10.23 set forth definitions and interpretative regulations adopted by the Commissioner of Customs pertaining to the construction of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and related provisions of law. These provisions concern claims for the exemption from duty provided by subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for American-made fabricated components which are returned to the United States as parts of articles assembled abroad. The examples included in these sections describe specific situations in which the exemption may or may not be applicable. The definitions and regulations that follow are promulgated to inform the public of the constructions and interpretations that the United States Customs Service shall give to relevant statutory terms and to assure the impartial and uniform assessment of duties upon merchandise claimed to be partially exempt from duty under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), at the various ports of entry. Nothing in these regulations purports or is intended to restrict the legal right of importers or others to a judicial review of the matters contained therein.

(b) Section 10.24 sets forth the documentary requirements applicable to the entry of assembled articles claimed to be subject to the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Allowance of an importer's claim is dependent upon meeting the statutory requirements for the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and his complying with the documentary requirements set forth in § 10.24.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.12 Definitions.

As used in §§ 10.11 through 10.24, the following terms shall have the meanings indicated:

(a) *American-made*. The term ''American-made'' is used to refer to a product of the United States as defined in paragraph (e) of this section.

(b) *Assembly*. ''Assembly'' means the fitting or joining together of fabricated components.

(c) *Exemption*. ''Exemption'' means the deduction of the cost or value of products of the United States which were assembled abroad in accordance with the requirements of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), from the full value of the assembled article.

(d) *Fabricated component.* ''Fabricated component'' means a manufactured article ready for assembly in the condition as exported except for operations incidental to the assembly.

(e) *Product of the United States.* A ''product of the United States'' is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of United States and foreign components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), provides that articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products of the United States. The rate of duty which is assessed upon the dutiable portion of the imported article is that which is applicable to the imported article as a whole under the appropriate provision of the HTSUS (19 U.S.C. 1202) for such article. If that provision requires a specific or compound rate of duty, the total duties assessed on the imported article are reduced in such proportion as the cost or value of the returned United States components which qualify for the exemption bears to the full value of the assembled article.

Example 1. A transistor radio is assembled abroad from foreign-made components and American-made transistors. Upon importation, the transistor radio is subject to the ad valorem rate of duty applicable to transistor radios upon the value of the radio less the cost or value of the American-made transistors assembled therein.

Example 2. A solid-state watch movement is assembled abroad from foreign-made components and an American-made integrated circuit. If the movement in question is subject to the specific rate of duty of 75 cents if the value of the assembled movement is $30, and if the value of the American-made integrated circuit is $10, then the value of the integrated circuit represents one third of the total value of the assembled article and the duty on the assembled article will be reduced by one third ($.25). Therefore, the duty on the assembled movement is 50 cents.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.14 Fabricated components subject to the exemption.

(a) *Fabricated components, the product of the United States.* Except as provided in § 10.15, the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), applies to fabricated components, the product of the United States. The components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad are not considered fabricated components.

Example 1. Articles identifiable in their exported condition as components or parts of the article into which they will be assembled, such as transistors, diodes, integrated circuits, machinery parts, or precut parts of wearing apparel, are regarded as fabricated components.

Example 2. Prestamped metal lead frames for semiconductor devices exported in multiple unit strips in which the individual frame units are connected to each other, or integrated circuit wafers containing individual integrated circuit dice which have been scribed or scored in the United States, are regarded as fabricated components. The separation of the individual frames by cutting, or the segmentation of the wafer into individual dice by flexing and breaking along scribed or scored lines, is regarded as an operation incidental to the assembly process.

Example 3. Wires of various type, electrical conductors, metal foils, insulating tapes, ribbons, findings used in dressmaking, and similar products, which are in a finished state when exported from the United States, and are ready for use in the assembly of the imported article, are regarded as fabricated components if they are only cut to length or subjected to operations incidental to the assembly process while abroad.

Example 4. Uncut textile fabrics exported in bolts from which wearing apparel components will be cut according to a pattern are not regarded as fabricated components. Similarly, other materials, such as lumber, leather, sheet metal, plastic sheeting, exported in basic shapes and forms to be fabricated into components for assembly, are not eligible for treatment as fabricated components.

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials may become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process. The mere finishing or modification of a partially or nearly complete foreign product in the United States will not result in the substantial transformation of such product and it remains the product of a foreign country.

Example 1. A cast metal housing for a valve is made in the United States from imported copper ingots, the product of a foreign country. The housing is a product of the United States because the manufacturing operations performed in the United States to produce the housing resulted in a substantial transformation of the foreign copper ingots.

Example 2. An integrated circuit device is assembled in a foreign country and imported into the United States where its leads are formed by bending them to a specified angle. It is then tested and marked. The imported article does not become a product of the United States because the operations performed in the United States do not result in a substantial transformation of the foreign integrated circuit device.

Example 3. A circuit board assembly for a computer is assembled in the United States by soldering American-made and foreign-made components onto an American-made printed circuit board. The finished circuit board assembly has a distinct electronic function and is ready for incorporation into the computer. The foreign-made components have undergone a substantial transformation by becoming permanent parts of the circuit board assembly. The circuit board assembly, including all of its parts is regarded as a fabricated component, the product of the United States, for purposes of subheading 9802.00.80, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43022, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.15 Fabricated components not subject to the exemption.

Fabricated components which are not products of the United States are excluded from the exemption. In addition, the exemption is not applicable to any component exported from the Customs territory of the United States:

(a) From continuous Customs custody with remission, abatement, or refund of duty;

(b) With benefit of drawback;

(c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or

(d) After manufacture or production in the United States under subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

Example. Partially completed components of an electric motor are imported in several separate shipments and are entered under a temporary importation bond to be manufactured into finished motors under the provisions of subheading 9813.00.05, HTSUS (19 U.S.C. 1202). The components are completed and assembled into finished electric motors. The finished motors are exported and are assembled abroad into electric fans which are subsequently imported into the United States. Irrespective of the fact that the assembly of the motors might involve such a substantial change that the motor could be considered a product of the United States, no exemption may be given for the value of the

electric motors, since they were exported after manufacture or production in the United States under the provision of subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43023, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.16 Assembly abroad.

(a) *Assembly operations.* The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section. The mixing or combining of liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as an assembly.

Example 1. A television yoke is assembled abroad from American-made magnet wire. In the foreign assembly plant the wire is despooled and wound into a coil, the wire cut from the spool, and the coil united with other components, including a terminal panel and housing which are also American-made. The completed article upon importation would be subject to the ad valorem rate of duty applicable to television parts upon the value of the yoke less the cost or value of the American-made wire, terminal panel and housing, assembled therein. The winding and cutting of the wire are either assembly steps or steps incidental to assembly.

Example 2. An aluminum electrolytic capacitor is assembled abroad from American-made aluminum foil, paper, tape, and Mylar film. In the foreign assembly plant the aluminum foil is trimmed to the desired width, cut to the desired length, interleaved with paper, which may or may not be cut to length or despooled from a continuous length, and rolled into a cylinder wherein the foil and paper are cut and a section of sealing tape fastened to the surface to prevent these components from unwinding. Wire or other electric connectors are bonded at appropriate intervals to the aluminum foil of the cylinder which is then inserted into a metal can, and the ends closed with a protective washer. As imported, the capacitor is subject to the ad valorem rate of duty applicable to capacitors upon the value less the cost or value of the American-made foil, paper, tape, and Mylar film. The operations performed on these components are all either assembly steps or steps incidental to assembly.

Example 3. The manufacture abroad of cloth on a loom using thread or yarn exported from the United States on spools, cops, or pirns is not considered an assembly but a weaving operation, and the thread or yarn does not qualify for the exemption. However, American-made thread used to sew buttons or garment components is qualified for the exemption because it is used in an operation involving the assembly of solid components.

(b) *Operations incidental to the assembly process.* Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and will not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process:

(1) Cleaning;

(2) Removal of rust, grease, paint, or other preservative coating;

(3) Application of paint or preservative coating, including preservative metallic coating, lubricants, or protective encapsulation;

(4) Trimming, filing, or cutting off of small amounts of excess materials;

(5) Adjustments in the shape or form of a component to the extent required by the assembly being performed abroad;

(6) Cutting to length of wire, thread, tape, foil, and similar products exported in continuous length; separation by cutting of finished components, such as prestamped integrated circuit lead frames exported in multiple unit strips; and

(7) Final calibration, testing, marking, sorting, pressing, and folding of assembled articles.

(c) *Operations not incidental to the assembly process.* Any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it effects a substantial transformation of the article, will not be regarded as incidental to the assembly and will preclude the application of the exemption to such article. The following are examples of operations not considered incidental to the assembly as provided under subheading 9802.00.80, Harmonized Tariff

Schedule of the United States (19 U.S.C. 1202):

(1) Melting of exported ingots and pouring of the metal into molds to produce cast metal parts;

(2) Cutting of garment parts according to pattern from exported material;

(3) Chemical treatment of components or assembled articles to impart new characteristics, such as showerproofing, permapressing, sanforizing, dying or bleaching of textiles;

(4) Machining, polishing, burnishing, peening, plating (other than plating incidental to the assembly), embossing, pressing, stamping, extruding, drawing, annealing, tempering, case hardening, and any other operation, treatment or process which imparts significant new characteristics or qualities to the article affected.

(d) *Joining of American-made and foreign-made components.* An assembly operation may involve the use of American-made components and foreign-made components. The various requirements for establishing entitlement to the exemption apply only to the American-made components of the assembly.

Example. Diodes are assembled abroad from American-made components. The process includes the encapsulation of the assembled components in a plastic shell. The plastic used for the encapsulation is in the form of a pellet, and is of foreign origin. After the prefabricated diode components are assembled, the assembled unit is placed in a transfer molding machine, where, by use of the pellet, molten epoxy is caused to flow around the perimeters of the assembled components, forming upon solidification a plastic body for the diode. Upon importation, exemption may be granted for the value of the American-made components, but not for the value of the plastic pellet. If the plastic pellet used for encapsulation was of United States origin, its value would still be a part of the dutiable value of the diode, because the plastic pellet is not a fabricated component of a type designed to be fitted together by assembly, but merely a premeasured quantity of material which was applied to the assembled unit by a process not constituting an assembly.

(e) *Subassembly.* An assembly operation may involve the joining or fitting of American-made components into a part or subassembly of an article, followed by the installation of the part or subassembly into the complete article.

Example. Rolls of foil and rolls of paper are exported and cut to specific length abroad and interleaved and rolled to form the electrodes and dielectric of a capacitor. Following this procedure, the rolls are assembled with cans and other parts to form a complete capacitor. The foil and paper are entitled to the exemption.

(f) *Packing.* The packing abroad of merchandise into containers does not in itself qualify either the containers or their contents for the exemption. However, assembled articles which otherwise qualify for the exemption and which are packaged abroad following their assembly will not be disqualified from the exemption by reason of their having been so packaged, whether for retail sale or for bulk shipment. The tariff status of the packing materials or containers will be determined in accordance with General Rule of Interpretation 5, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43023, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51248, Dec. 21, 1988; CBP Dec. 08-21, 73 FR 33300, June 12, 2008]

§ 10.17 Valuation of exempted components.

The value of fabricated components to be subtracted from the full value of the assembled article is the cost of the components when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the components at the time of their shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers. However, if the appraising officer concludes that the cost or value of the fabricated components so ascertained does not represent a reasonable cost or value, then the value of the components shall be determined in accordance with section 402 or section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

[T.D. 75–230, 40 FR 43024, Sept. 18, 1975]

§ 10.18 Valuation of assembled articles.

As in the case of the appraisement of any other import merchandise (see subpart C of part 152 of this chapter), the full value of assembled articles imported under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), is determined in accordance with 19 CFR 152.100 *et seq*.

[T.D. 87–89, 52 FR 24445, July 1, 1987, as amended by T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§§ 10.19–10.20 [Reserved]

§ 10.21 Updating cost data and other information.

When a claim for the exemption is predicated on estimated cost data furnished either in advance of or at the time of entry, this fact should be clearly stated in writing at the time of entry, and suspension of liquidation may be requested by the importer or his agent pending the furnishing of actual cost data. Actual cost data must be submitted as soon as accounting procedures permit. To insure that information used for Customs purposes is reasonably current, the importer shall ordinarily be required to furnish updated cost and assembly data at least every six months, regardless of whether he considers that significant changes have occurred. The 6-month period for the submission of updated cost or other data may be extended by the port director if such extension is appropriate for the type of merchandise involved, or because of the accounting period normally used in the trade, or because of other relevant circumstances.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975]

§ 10.23 Standards, quotas, and visas.

All requirements and restrictions applicable to imported merchandise, such as labeling, radiation standards, flame-retarding properties, quotas, and visas, apply to assembled articles eligible for the exemption in the same manner as they would apply to all other imported merchandise.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975]

§ 10.24 Documentation.

(a) *Documents required*. The following documents shall be filed in connection with the entry of assembled articles claimed to be subject to the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

(1) *Declaration by the assembler*. A declaration by the person who performed the assembly operations abroad shall be filed in substantially the following form:

I, _____, declare that to the best of my knowledge and belief the _____ were assembled in whole or in part from fabricated components listed and described below, which are products of the United States:

Marks of identification, numbers	Description of component	Quantity	Unit value at time and place of export from United States [1]	Port and date of export from United States	Name and address of manufacturer

[1] In accordance with U.S. Note 4 to Subchapter II of Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Description of the operations performed abroad on the exported components (in sufficient detail to enable Customs officers to determine whether the operations performed are within the preview of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) (attach supplemental sheet if more space is required)):

Date Signature

Address Capacity

(2) *Endorsement by the importer*. An endorsement, in substantially the following form, shall be signed by the importer:

I declare that to the best of my knowledge and belief the (above), (attached) declaration, and any other information submitted herewith, or otherwise supplied or referred to, is correct in every respect and there has been compliance with all pertinent legal notes to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Date	Signature
Address	Capacity

(b) *Revision of format*. In specific cases, the port director may revise the format of either of the documents specified in paragraph (a) of this section and may make such changes as conditions warrant, provided the data and information required to be supplied in these documents are presented. For example, if the components were furnished by the importer, the information on components may be supplied as part of the importer's endorsement, rather than as part of the assembler's declaration.

(c) *Reference to previously filed documents*. In lieu of filing duplicate lists of components and descriptions of assembly operations with each entry, the documents specified in paragraph (a) of this section may refer to assembly descriptions and lists of components previously filed with and approved by the port director, or to records showing costs, names of manufacturers, and other necessary data on components, provided the importer has arranged with the port director to maintain such records and keep them available for examination by authorized Customs officers.

(d) *Waiver of specific details for each entry*. There are cases where large quantities of United States components are purchased from various sources or exported at various ports and dates on a continuing basis, so that it is impractical to identify the exact source, port and date of export for each particular component included in an entry of merchandise claimed to be subject to the exemption under subheading 9802.00.80, HTSUS (19 U.S.C. 1202). In these cases, specific details such as the port and date of export and the name of the manufacturer of the United States components may be waived if the port director is satisfied that the importer and assembler have established reliable controls to insure that all components for which the exemption is claimed are in fact products of the United States. These controls shall include strict physical segregation of United States and foreign components, as well as records of United States components showing quantities, sources, costs, dates shipped abroad, and other necessary information. These records shall be maintained by the importer and assembler for 5 years from the date of the released entry in a manner so that they are readily available for audit, inspection, copying, reproduction or other official use by authorized Customs officers.

(e) *Waiver of documents*. When the port director is satisfied that unusual circumstances make the production of either or both of the documents specified in paragraph (a) of this section, or of any of the information set forth therein, impractical and is further satisfied that the requirements of subheading 9802.00.80, HTSUS, and related legal notes have been met, he may waive the production of such document(s) or information.

(f) *Unavailability of documents at time of entry*. If either or both of the documents specified in paragraph (a) of this section are not available at the time of entry, a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter for the production of the document(s) may be given pursuant to §§ 113.41–113.46 and 141.66 of this chapter.

(g) *Responsibility of correctness*. Subject to the civil and criminal sanctions provided by law for false or fraudulent entries, the importer has the ultimate responsibility for supplying all information needed by the Customs Service to process an entry, and for the completeness and truthfulness of such information. If certain information cannot be supplied by the assembler, it must be provided by the importer.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§ 10.25 Textile components cut to shape in the United States and assembled abroad.

Where a textile component is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States and entered, or withdrawn from warehouse, for consumption on or after July 1,

1996, the value of the textile component shall not be included in the dutiable value of the article. For purposes of determining whether a reduction in the dutiable value of an imported article may be allowed under this section:

(a) The terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in § 102.21(b)(5) of this chapter;

(b) The operations performed abroad on the textile component shall conform to the requirements and examples set forth in § 10.16 insofar as they may be applicable to a textile component; and

(c) The valuation and documentation provisions of §§ 10.17, 10.18, 10.21 and 10.24 shall apply.

[T.D. 95–69, 60 FR 46196, Sept. 5, 1995; T.D. 95–69, 60 FR 55995, Nov. 6, 1995]

§ 10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components or ingredients; articles assembled in a beneficiary country from textile components cut to shape in the United States.

(a) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710, Harmonized Tariff Schedule of the United States (HTSUS)) shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled or processed in a beneficiary country in whole of fabricated components that are a product of the United States; or

(2) If the article is processed in a beneficiary country in whole of ingredients (other than water) that are a product of the United States; and

(3) Neither the fabricated components, materials or ingredients after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(b) No article (except a textile or apparel product) entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled in a beneficiary country in whole of textile components cut to shape (but not to length, width, or both) in the United States from foreign fabric; or

(2) If the article is assembled in a beneficiary country in whole of both textile components described in paragraph (b)(1) of this section and components that are products of the United States; and

(3) Neither the components after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(c) For purposes of this section:

(1) The terms ''textile article'', ''apparel article'', and ''textile or apparel product'' cover all articles, other than footwear and parts of footwear, that are classifiable in an HTSUS subheading which carries a textile and apparel category number designation;

(2) The term ''beneficiary country'' has the meaning set forth in § 10.191(b)(1); and

(3) A component, material, ingredient, or article shall be deemed to have not entered into the commerce of any foreign country other than a beneficiary country if:

(i) The component, material, or ingredient was shipped directly from the United States to a beneficiary country, or the article was shipped directly to the United States from a beneficiary country, without passing through the territory of any non-beneficiary country; or

(ii) Where the component, material, ingredient, or article passed through the territory of a non-beneficiary country while en route to a beneficiary country or the United States:

(A) The invoices, bills of lading, and other shipping documents pertaining to the component, material, ingredient, or article show a beneficiary country or the United States as the final destination and the component, material, ingredient, or article was neither sold at wholesale or retail nor subjected to any processing or other operation in the non-beneficiary country; or

(B) The component, material, ingredient, or article remained under the control of the customs authority of the non-beneficiary country and was not subjected to operations in that non-beneficiary country other than loading

and unloading and activities necessary to preserve the component, material, ingredient, or article in good condition.

[T.D. 95–69, 60 FR 46197, Sept. 5, 1995]

FREE ENTRY—ARTICLES FOR THE USE OF FOREIGN MILITARY PERSONNEL

§ 10.30c [Reserved]

TEMPORARY IMPORTATIONS UNDER BOND

§ 10.31 Entry; bond.

(a)(1) Entry of articles brought into the United States temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS), unless covered by an A.T.A. carnet or a TECRO/AIT carnet as provided in part 114 of this chapter, shall be made on Customs Form 3461 or 7533, supported by the documentation required by § 142.3 of this chapter. However, when § 10.36 or § 10.36a is applicable, or the aggregate value of the article is not over $250, the form prescribed for the informal entry of importations by mail, in baggage, or by other means, may be used. When entry is made on Customs Form 3461 or 7533, an entry summary, Customs Form 7501, shall be filed within 10 days after time of entry, in accordance with subpart B, part 142 of this chapter.

(2) If Customs Form 7501 is filed at time of entry, it shall serve as both the entry and entry summary, and Customs Form 3461 or 7533 shall not be required. Customs Form 7501 shall be in original only, except for entries under subheading 9813.00.05, HTSUS, which require a duplicate copy for statistical purposes. When articles are entered under an A.T.A. carnet or a TECRO/AIT carnet, the importation voucher of the carnet shall serve as the entry.

(3) In addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include:

(i) The HTSUS subheading number under which entry is claimed.

(ii) A statement of the use to be made of the articles in sufficient detail to enable the port director to determine whether they are entitled to entry as claimed, and

(iii) A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

(b) The port director, if he is satisfied as to the importer's identity and good faith, may admit a vehicle or craft brought in by a nonresident to take part in a race or other specific contest for which no money purse is awarded, under the provisions of subheading 9813.00.35, HTSUS, without formal entry or security for exportation. If at the time of arrival it appears that the article is likely to remain in the United States beyond 90 days, formal entry and bond shall be taken.

(c) When any article has been admitted without formal entry or security for exportation and the importer thereafter desires to prolong his stay beyond 90 days, an entry covering the article and security for its exportation shall be accepted at any port where the article may be presented for entry. The time during which the imported article may remain in the United States under the entry shall be computed from the date of its original arrival in the United States. The estimated duties for the purpose of fixing the amount of any bond required by paragraph (f) of this section shall be the estimated duties which would have been required to be deposited had the article been entered under an ordinary consumption entry on the date of the original arrival.

(d) [Reserved]

(e) The entry or invoice shall: (1) Describe each article in detail; (2) set forth the value of each article; and (3) set forth any marks or numbers thereon or other distinguishing features thereof. In the case of a vehicle, aircraft, or pleasure boat entered under subheading 9813.00.05, HTSUS and § 10.36a, the registration number, and engine or motor number, and the body number (if available) shall also be shown on the entry. Examination of the imported articles shall be made whenever the circumstances warrant, and occasionally in any event to an extent which will enable the Customs officer to determine that the importation is in agreement with the invoice or entry as to identity and quantity and for the purpose of accepting the entry under the applicable provisions of

Chapter 98, Subchapter XIII, HTSUS. No examination for the purpose of appraisement and no appraisement of the articles shall be made.

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the port director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. If appropriate a carnet, under the provisions of part 114 of this chapter, may be filed in lieu of a bond on Customs Form 301 (containing the bond conditions set forth in § 113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS without formal entry, as provided for in §§ 10.36 and 10.36a, or the amount of the bond taken under any subheading of Chapter 98, Subchapter XIII, HTSUS, is less than $25, the bond shall be without surety or cash deposit, and the bond shall be modified to so indicate. In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, Australia, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, Colombia, or Panama and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, HTSUS, in the country of which the importer is a resident.

(g) Claim for free entry under Chapter 98, Subchapter XIII, HTSUS may be made for articles of any character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from CBP custody, or even though released from CBP custody if it is established that the original entry was made on the basis of a clerical error, mistake of fact, or other inadvertence within the meaning of section 514(a), Tariff Act of 1930, as amended, and was brought to the attention of CBP within the time limits of that section. If an entry is so amended, the period of time during which the merchandise may remain in the customs territory of the United States under bond shall be computed from the date of importation. In the case of articles covered by an informal mail entry, such a claim may be made within a reasonable time either before or after the articles have been released from CBP custody.

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall not be liquidated as the transaction does not involve liquidated duties. However, a TIB importer may be required to file an entry for consumption and pay duties, or pay liquidated damages under its bond for a failure to do so, in the case of merchandise imported under subheading 9813.00.05, HTSUS, and subsequently exported to Canada or Mexico (see § 181.53 of this chapter).

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.31, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 10.33 Theatrical effects.

For purposes of the entry of theatrical scenery, properties and apparel under subheading 9817.00.98, Harmonized Tariff Schedule of the United States:

(a) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties; and

(b) The term ''theatrical scenery, properties and apparel'' shall not be construed to include motion-picture films.

For provisions relating to the return without formal entry of theatrical effects taken from the United States, see § 10.68 of this part.

[T.D. 92–85, 57 FR 40605, Sept. 4, 1992, as amended by CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§ 10.35 Models of women's wearing apparel.

(a) Models of women's wearing apparel admitted under subheading 9813.00.10, Harmonized Tariff Schedule of the United States (HTSUS), shall not be removed from the importer's establishment for reproducing, copying, painting, sketching, or for any other use by others, nor be used in the importer's establishment for such purposes except by the importer or his employees.

(b) Invoices covering models of women's wearing apparel entered under subheading 9813.00.10 or 9813.00.25, HTSUS shall state the kind and color of the principal material from which the apparel is made, and shall contain a description of the lining and the trimming, stating whether composed of fur, lace, embroidery, or other material. Invoices shall also contain a statement as to how the trimming is applied, that is, whether on the cuffs, collar, sleeves, or elsewhere, and the total value of each completed garment or article.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§ 10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.

(a) Samples accompanying a commercial traveler who presents an adequate descriptive list or a special CBP invoice, and professional equipment, tools of trade, and repair components for such equipment or tools imported in his baggage for his own use by a nonresident sojourning temporarily in the United States may be entered on the importer's baggage declaration in lieu of formal entry and examination and may be passed under subheadings 9813.00.20 or 9813.00.50, Harmonized Tariff Schedule of the United States, (HTSUS), at the place of arrival in the same manner as other passengers' baggage. The examination may be made by an inspector who is qualified, in the opinion of the port director, to determine the amount of the bond required by § 10.31(c) to be filed in support of the entry. If the articles are a commercial traveler's samples and exceed $500 in value, a special Customs invoice or a descriptive list shall be furnished.

(b) When the proprietor or manager of a theatrical exhibition arriving from abroad who has entered his scenery, properties, and apparel under subheading 9817.00.98, HTSUS, contemplates side trips to a contiguous country with the exhibition within the period of time during which the merchandise may remain in the customs territory of the United States under bond, including any lawful extension, a copy of the entry covering the effects and a copy of a descriptive list of such effects or invoice furnished by him may be certified by the examining officer and returned to the proprietor or manager for use in registering the effects with the CBP officers at the port of exit, and in clearing them through CBP on his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the theatrical effects are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the customs territory of the United States under bond, including any lawful extension. Similar treatment may be accorded articles

entered under other subheadings in chapter 98, subchapter XIII, HTSUS, upon approval by Headquarters, U.S. Customs and Border Protection.

(c) When a commercial traveler contemplates side trips to a contiguous country within the period of time during which the merchandise may remain in the customs territory of the United States under bond, including any lawful extension, a copy of his baggage declaration and a copy of the descriptive list or special CBP invoice furnished by him may be certified by the examining officer and returned to the traveler for use in registering the samples with CBP officers at the port of exit, and in clearing them through CBP upon his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the samples are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the customs territory of the United States under bond, including any lawful extension.

(d) The privilege of clearance of commercial travelers' samples or professional equipment, tools of trade, and repair components for such equipment or tools imported for his own use by a nonresident sojourning temporarily in the United States on a baggage declaration under bond without surety or cash deposit shall not be accorded to a commercial traveler or such nonresident who, through fraud or culpable negligence, has failed to comply with the provisions of such a bond in connection with a prior arrival.

Such a commercial traveler or nonresident shall be required to file a formal entry under subheading 9813.00.20 or subheading 9813.00.50, HTSUS with a bond supported by a surety or cash deposit in lieu of surety.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9799, June 25, 1969; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (as defined in §§ 10.8, 10.490, 10.570, and 181.64 of this chapter) may be entered on the operator's baggage declaration, in lieu of formal entry and examination, and may be passed under subheading 9813.00.05, Harmonized Tariff Schedule of the United States (HTSUS), at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered. The bond, prescribed by § 10.31(f), filed to support entry under this section shall be without surety or cash deposit except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS, at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

(b) Each vehicle, pleasure boat, or aircraft to which paragraph (a) of this section is applicable shall be identified on the operator's baggage declaration, which must include the data prescribed in paragraphs (a) and (e) of § 10.31.

(c) Exportation shall be effected in accordance with the provisions of § 10.38.

(d) The privilege of clearance of a vehicle, pleasure boat, or aircraft brought in by the operator of such vehicle, pleasure boat, or aircraft, for repair or alteration on his baggage declaration under bond without surety or cash deposit shall not be granted to an individual who has failed to comply with the provisions of such a bond in connection with any prior arrival. Such individual shall be required to file a formal entry under subheading

9813.00.05, HTSUS, with a bond supported by a surety or cash deposit in lieu of surety.

[T.D. 66–39, 31 FR 2817, Feb. 17, 1966, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; CBP Dec. 05–07, 70 FR 10872, Mar. 7, 2005; CBP Dec. 07–28, 72 FR 31995, June 11, 2007]

§ 10.37 Extension of time for exportation.

The period of time during which merchandise entered under bond under chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), may remain in the customs territory of the United States, may be extended for not more than two further periods of 1 year each, or such shorter period as may be appropriate. Extensions may be granted by the director of the port where the entry was filed upon written application on CBP Form 3173, provided the articles have not been exported or destroyed before the receipt of the application, and liquidated damages have not been assessed under the bond before receipt of the application. Any untimely request for an extension of time for exportation shall be referred to the Director, Commercial and Trade Facilitation Division, Office of International Trade, CBP Headquarters, for disposition. Any request for relief from a liquidated damage assessment in excess of a Fines, Penalties, and Forfeitures Officer's delegated authority shall be referred to the Director, Border Security and Trade Compliance Division, Office of International Trade, CBP Headquarters, for disposition. No extension of the period for which a carnet is valid shall be granted.

[T.D. 69–146, 34 FR 9799, June 25, 1969, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 10.38 Exportation.

(a) Articles entered under chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) may be exported at the port of entry or at another port. An application on Customs Form 3495 shall be filed in duplicate with the port director a sufficient length of time in advance of exportation to permit the examination and identification of the articles if circumstances warrant such action and, in such event, the applicant shall be notified on a copy of Customs Form 3495 where the articles are to be sent for identification. If a carnet was used for entry purposes, the reexportation voucher of the carnet shall be filed, in addition to Customs Form 3495, and the carnet shall be presented for certification.

(b) All expenses in connection with the delivery of the articles for examination, the cording and sealing of such articles, and their transfer for exportation shall be paid by the parties in interest.

(c) If exportation is to be made at a port other than the one at which the merchandise was entered, the application on Customs Form 3495 shall be filed in triplicate. There shall also be filed with the application a certified copy of the import entry or a certified copy of the invoice used on entry.

(d) If the goods are examined at one port and are to be exported from another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. In such cases Customs Form 3495 shall be filed in triplicate. Articles entered under a carnet shall not be examined elsewhere than at the port from which they are to be exported.

(e) If the articles are to be exported by mail or parcel post, the package containing the articles must be mailed under Customs supervision after examination. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter.

(f) Whenever the circumstances warrant, and occasionally in any event, port directors shall cause the fact of exportation to be verified by the Office of Enforcement in harmony with the procedures provided for in §§18.7 and 191.61 of this chapter.

(g) Upon the presentation of satisfactory evidence to the director of the port at which samples were entered under subheading 9813.00.20, HTSUS, or professional equipment or tools of trade were entered under subheading 9813.00.50, HTSUS, that such articles

cannot be exported for the reason that they have been seized (other than by seizure at the suit of private persons), the requirement of exportation shall be suspended for the duration of the seizure. The articles shall be exported promptly after release from seizure.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9799, June 25, 1969; T.D. 83–212, 48 FR 46771, Oct. 14, 1983; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 98–16, 63 FR 11004, Mar. 5, 1998]

§ 10.39 Cancellation of bond charges.

(a) Charges against bonds taken pursuant to Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States, (HTSUS), may be canceled in the manner prescribed in § 113.55 of this chapter. A completed reexportation counterfoil on a carnet establishes that the articles covered by the carnet have been exported, and no claim shall be brought against the guaranteeing association under the carnet for failure to export, except under the provisions of § 114.26 of this chapter. In the case of articles entered under subheading 9813.00.30, HTSUS, which are destroyed because of their use for the purposes of importation, the bond charge shall not be canceled unless there is submitted to the port director a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the port director is satisfied that the articles were so destroyed as articles of commerce within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension). Bonds covering articles entered under other provisions of law shall not be canceled upon proof of destruction, except as provided for in paragraph (c) of this section, unless the articles are destroyed under Customs supervision in accordance with section 557, Tariff Act of 1930, as amended, and § 158.43 of this chapter.

(b) Where exportation has been made at a port other than the port of entry, the bond may be canceled upon the certificate of lading received from the port of exportation, showing that such exportation was made within the period of time during which the articles may remain in the Customs territory of the United States under bond. In addition, the port director may require the production of a landing certificate signed by a revenue officer of the country to which the merchandise is exported.

(c) When articles entered temporarily free of duty under bond are destroyed within the bond period by death, accidental fire, or other casualty, petition for relief from liability under the bond shall be made to the United States Customs Service. The petition shall be accompanied by a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the destruction of the articles.

(d)(1) If any article entered under Chapter 98, subchapter XIII, HTSUS, except those entered under a carnet, has not been exported or destroyed in accordance with the regulations in this part within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the Fines, Penalties, and Forfeitures Officer shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a different amount is prescribed by § 10.31(f). The demand shall include a statement that a written petition for relief from the payment of the full liquidated damages may be filed with the Fines, Penalties, and Forfeitures Officer within 60 days after the date of the demand. For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

(2) If articles entered under a carnet have not been exported or destroyed in accordance with the regulations in this part within the carnet period, the port director shall promptly after expiration of that period make demand in writing upon the importer and guaranteeing association for the payment of liquidated damages in the amount of 110 percent of the estimated duties on the articles not exported or destroyed. The guaranteeing association shall have a period of 6 months from the date of claim in which to furnish proof

of the exportation or destruction of the articles under conditions set forth in the Convention or Agreement under which the carnet is issued. If such proof is not furnished within the 6–month period, the guaranteeing association shall forthwith pay the liquidated damages provided for above. The payment shall be refunded if the guaranteeing association within 3 months from the date of payment furnishes the proof referred to above. No claim for payment under a carnet covering a temporary importation may be made against the guaranteeing association more than 1 year after the expiration of the period for which the carnet was valid.

(3) Demand for return to Customs custody. When the demand for return to Customs custody is made in the case of merchandise entered under Chapter 98, subchapter XIII, HTSUS (19 U.S.C. 1202), liquidated damages in an amount equal to double the estimated duties on the merchandise not returned shall be demanded, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the liquidated damages demanded shall be in an amount equal to 110 percent of the estimated duties.

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it will be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages in any case in his or her delegated authority as follows:

(1) If evidence is furnished which satisfies the Fines, Penalties, and Forfeitures Officer that the article would have been entitled to free entry as domestic products exported and returned had the evidence been furnished at the time of entry, without the collection of liquidated damages.

(2) If the article has been exported or destroyed under Customs supervision but not within the period of time during which the articles may remain in the Customs territory of the United States under bond, upon the payment of such lesser amount as the port director may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the Fines, Penalties, and Forfeitures Officer is satisfied that the delay in exportation or destruction was for the benefit of the United States or was occasioned wholly by circumstances reasonably beyond the control of the parties concerned and which could not have been anticipated by a reasonably prudent person.

(3) If the article was exported or destroyed within the period of time during which the articles may remain in the Customs territory of the United States under bond but not under Customs supervision and satisfactory documentary evidence of actual exportation, such as a foreign landing certificate, or of death or other complete destruction, such as a veterinarian's certificate or certificates of two disinterested witnesses, are furnished together with a complete explanation by the applicant of the failure to obtain Customs supervision, upon the payment of such lesser amount as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the port director is satisfied that the merchandise was destroyed under circumstances which precluded any arrangement to obtain Customs supervision. Satisfactory documentary evidence of exportation, in the case of carnets, would include the particulars regarding importation or reimportation entered in the carnet by the Customs authorities of another contracting party, or a certificate with respect to importation or reimportation issued by those authorities, based on the particulars shown on a voucher which was detached from the carnet on importation or reimportation into their territory, provided it is shown that the importation or reimportation

took place after the exportation which it is intended to establish.

(4) Upon the payment of an amount equal to double the duty which would have accrued on the articles had they been entered under an ordinary consumption entry, or equal to 110 percent of such duties where that percentage is prescribed in § 10.31(f), if such amount is determined to be less than the full amount of the bond.

(f) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may indicate to Customs in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and the entry will be closed. The importer shall notify the surety in writing of the breach and payment. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by § 172.1(a) of this chapter.

(g) If the petitioner is not satisfied with the port director's action under this section and submits a supplemental petition, both the original and the supplemental petitions shall be transmitted to the designated Headquarters official with a full report on the case.

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.39, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 10.40 Refund of cash deposits.

(a) When a cash deposit is made in lieu of surety, it shall be refunded to the person in whose name the entry is made upon exportation in compliance with § 10.38.

(b) If any article entered under Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, is not exported or destroyed within the period of time during which articles may remain in the Customs territory of the United States under bond (including any lawful extension), the port director shall notify the importer in writing that the entire cash deposit will be transferred to the regular account as liquidated damages unless a written application for relief from the payment of the full liquidated damages is filed with the port director within 60 days after the date of the notice. If such an application is timely filed, the transfer of the cash deposit to the regular account as liquidated damages shall be deferred pending the decision of the Headquarters, U.S. Customs Service or, in appropriate cases, the port director on the application.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 41249, Dec. 21, 1988]

INTERNATIONAL TRAFFIC

§ 10.41 Instruments; exceptions.

(a) Locomotives and other railroad equipment, trucks, buses, taxicabs, and other vehicles used in international traffic shall be subject to the treatment provided for in part 123 of this chapter.

(b) [Reserved]

(c) Foreign-owned aircraft arriving in the United States shall be subject to the treatment provided for in part 122 of this chapter, unless entered under the provisions of §§ 10.31, 10.183, or paragraph (d) of this section.

(d) Any foreign-owned locomotive or other railroad equipment, truck, bus, taxicab, or other vehicle, aircraft, or undocumented boat brought into the United States for the purpose of carrying merchandise or passengers between points in the United States for hire or as an element of a commercial transaction, except as provided at §§ 123.12 (a) and (b), 123.14(c), and 141.4(b)(4), is subject to treatment as an importation of merchandise from a foreign country and a regular entry for such vehicle, aircraft or boat will be made. The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(e) [Reserved]

(f) Material for the maintenance or repair of international cables under the

high seas, if requiring storage in special tanks for preservation, may be placed in tanks specially bonded for the purpose and withdrawn therefrom for high-seas installation without the payment of duty and without limitation of the storage period to the usual 3-year warehousing period. International cables laid under the territorial waters of the United States but not brought on shore in the United States shall be admitted without entry or the payment of duty. With respect to international cables laid under the territorial waters of the United States but brought on shore in the United States, only that part of the cable in the United States between the point of entry into the territorial waters of the United States and the first point of support on land in the United States shall be admitted without the payment of duty.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 70–121, 35 FR 8222, May 26, 1970; T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 84–109, 49 FR 19450, May 8, 1984; T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 99–79, 64 FR 61205, Nov. 10, 1999]

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

(a)(1) Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic are hereby designated as ''instruments of international traffic'' within the meaning of section 322(a), Tariff Act of 1930, as amended. The Commissioner of Customs is authorized to designate as instruments of international traffic, in decisions to be published in the weekly Customs Bulletin, such additional articles or classes of articles as he shall find should be so designated. Such instruments may be released without entry or the payment of duty, subject to the provisions of this section.

(2) Repair components, accessories, and equipment for any container of foreign production which is an instrument of international traffic may be entered or withdrawn from warehouse for consumption without the deposit of duty if the person making the entry or withdrawal from warehouse files a declaration that the repair component was imported to be used in the repair of a container of foreign production which is an instrument of international traffic, or that the accessory or equipment is for a container of foreign production which is an instrument of international traffic. The port director must be satisfied that the importer of the repair component, accessory, or equipment had the declared intention at the time of importation.

(3) As used in this section, ''instruments of international traffic'' includes the normal accessories and equipment imported with any such instrument which is a ''container'' as defined in Article 1 of the Customs Convention on Containers.

(b) The reexportation of a container, as defined in Article 1 of the Customs Convention on Containers, which has become badly damaged, shall not be required in the case of a duly authenticated accident if the container (1) is subjected to applicable import duties and import taxes, or (2) is abandoned free of all expense to the Government or destroyed under Customs supervision at the expense of the parties concerned, following the procedure outlined in §158.43(c) of this chapter. Any salvaged parts and materials shall be subjected to applicable import duties and import taxes. Replaced parts which are not reexported shall be subjected to import duties and import taxes except where abandoned free of expense to the Government or destroyed under Customs supervision at the expense of the parties concerned.

(c) The instruments of international traffic designated in paragraph (a) of this section may be released in accordance with the provisions of that paragraph only after the applicant for such release has filed a bond on Customs Form 301, containing the bond conditions set forth in §113.66 of this chapter. The required application may be filed at the port of arrival or at a subsequent port to which an instrument shall have been transported in bond or to which a container shall have been moved under cover of a TIR carnet (see part 114 of this chapter) showing the characteristics and value of the container on the Goods Manifest of the

carnet. If the container is listed on the Goods Manifest of the carnet, the application may be filed at the port of arrival or at the subsequent port. If the container is not listed on the Goods Manifest, the application shall be filed at the port of arrival. When the application is filed at a port other than the port at which the bond is on file, the following procedure applies:

(1) When the application is filed before the fact of approval of the applicant's bond has been established, the applicant must submit with the application, or the Customs officer to whom the application is made must obtain, evidence that a current bond is on file at another port. That evidence may consist of a certified copy of the bond, or any other evidence which will satisfy the Customs officer to whom the application is made that a current bond is on file at another port.

(2) If the application is filed after the fact of approval of the applicant's bond has been established, a certified copy of that bond need not be filed at the port of release. Upon determination by the appropriate Customs officer that the fact of approval of the applicant's bond has been established, and the bond has not been subsequently discontinued, the instruments of international traffic will be released as provided for in paragraph (a) of this section.

(3) Upon the request of the applicant, the appropriate Customs officer at the port at which the instruments of international traffic are to be released will determine whether or not the fact of approval of the applicant's bond has been established. If the approval has not been established, the Customs officer with whom the application has been filed will advise the applicant of the nature of the evidence required to establish the fact that a current bond is on file at another port.

(d) If an instrument of foreign origin, or of United States origin which has been increased in value or improved in condition by a process of manufacture or other means while abroad, is released under this section and is subsequently diverted to point-to-point local traffic within the United States, or is otherwise withdrawn in the United States from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties. An instrument of United States origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad and which is released under this section shall not be subject to entry or the payment of duty if it is so diverted or otherwise withdrawn.

(e) The person who filed the application for release under paragraph (a)(1) of this section shall promptly notify a director of a port of entry in the United States as defined in Section 401(k), Tariff Act of 1930, as amended, (1) that the container is to be abandoned or destroyed, as described in paragraph (b) of this section, or (2) that the instrument is the subject of a diversion or withdrawal as described in paragraph (d) of this section, in which event he shall file with the port director a consumption entry for the instrument and pay all import duties and import taxes due on the container or instrument at the rate or rates in effect and in its condition on the date of such diversion or withdrawal.

(f)(1) Except as provided in paragraph (j) of this section, an instrument of international traffic (other than a container as defined in Article 1 of the Customs Convention on Containers that is governed by paragraphs (g) (1)–(3) of this section) may be used as follows in point-to-point traffic, provided such traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic:

(i) Picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the point of destination of its imported cargo; or

(ii) Picking up and delivering loads at intervening points in the United States while en route from the point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure.

(2) Neither use as enumerated in paragraph (f)(1)(i) or (ii) of this section constitutes a diversion to unpermitted

point-to-point local traffic within the United States or a withdrawal of an instrument in the United States from its use as an instrument of international traffic under this section.

(g)(1) Except as provided in paragraph (j) of this section, a container (as defined in Article 1 of the Customs Convention on Containers) that is designated as an instrument of international traffic is deemed to remain in international traffic provided that the container exits the U.S. within 365 days of the date on that it was admitted under this section. An exit from the U.S. in this context means a movement across the border of the United States into a foreign country where either:

(i) All merchandise is unladen from the container; or

(ii) Merchandise is laden aboard the container (if the container is empty).

(2) The person who filed the application for release under paragraph (a)(1) of this section is responsible for keeping and maintaining such records, otherwise generated and retained in the ordinary course of business, as may be necessary to establish the international movements of the containers. Such records shall be made available for inspection by Customs officials upon reasonable notice.

(3) If the container does not exit the U.S. within 365 days of the date on which it is admitted under this section, such container shall be considered to have been removed from international traffic, and entry for consumption must be made within 10 business days after the end of the month in which the container is deemed removed from international traffic. When entry is required under this section, any containers considered removed from international traffic in the same month may be listed on one entry. Such entry may be made at any port of entry. Under 19 U.S.C. 1484(a)(1)(B), the importer of record is required, using reasonable care, to complete the entry by filing with Customs the declared value, classification and rate of duty applicable to the merchandise. The importer of record must use the value of the container as determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by the Trade Agreements Act of 1979 (TAA).

(h) For failure promptly to report the diversion or withdrawal or promptly to make the required entry and pay the duties due, the applicant shall be liable for the payment of liquidated damages equal to the domestic value of the instrument established in accordance with Section 606, Tariff Act of 1930.

(i) When an instrument of international traffic, as provided in paragraph (a) of this section, is returned to the United States and released in accordance with the provisions of that paragraph, any repairs which may have been made to the instrument while it was abroad are not subject to entry or the payment of duty whether the instrument is of foreign or domestic manufacture, whether it left the United States empty or loaded, and whether or not the repairs made abroad were in contemplation when the instrument left the United States.

(j) Containers and other articles designated as instruments of international traffic in accordance with this section are nevertheless subject to the application of the coastwise laws of the United States, with particular reference to Section 883, Title 46, United States Code (see § 4.93 of this chapter).

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.41a, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

(a) The holders and containers described in this section may be released without entry or the payment of duty, subject to the provisions of this section.

(b) Subject to the approval of a port director pursuant to the procedures described in this paragraph, certain foreign- or U.S.-made shipping devices arriving from Canada or Mexico, including racks, holders, pallets, totes, boxes and cans, need not be serially numbered or marked if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories such as twenty and forty foot

containers of general use and ''igloo'' air freight containers. The following or similar notation shall appear on the vehicle or vessel manifest in relation to such shipping devices which are exempt from serial numbering or marking requirements pursuant to this paragraph: ''The shipping devices transported herein, which are not serially numbered or marked, have been exempted from such requirement pursuant to an application approved under 19 CFR 10.41b(b).'' Also, pallets and other solid wood shipping devices must be accompanied by an importer document, to the extent that this is required by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, attesting to the admissibility of such devices as regards plant pest risk, as provided for in 7 CFR 319.40–3.

(1) An importer or his agent, regardless of whether the importer is the owner of the foreign- or U.S.-manufactured shipping devices, may apply to a port director of Customs at one of the importer's chiefly utilized Customs ports or the port within which the importer's or agent's recordkeeping center is located for permission to have such shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked. Application may be filed in only one port. Although no particular format is specified for the application, it must contain the information enumerated in paragraph (b)(2) of this section. Any duty which may be due on these shipping devices shall be tendered and paid cumulatively at the time specified in an approved application, which may be either before or after the arrival of the shipping devices in the U.S. (such as, at the time a contract, purchase order or lease agreement is issued).

(2) The application shall:

(i) Describe the types of shipping devices covered, their classification under the Harmonized Tariff Schedule of the U.S. (HTSUS), their countries of origin, and whether and to whom required duty was paid for them or when it will be paid for them, including duties for repair and modifications to such shipping devices while outside the U.S.;

(ii) Identify the intended ports where it is anticipated the shipping devices will be arriving and departing the U.S., as well as the particular movements and conveyances in which they are intended to be utilized;

(iii) Describe the applicant's proposed program for accounting for and reporting these shipping devices;

(iv) Identify the reporting period (which shall in no event be less frequent than annual), as well as the payment period within which applicable duty and fees must be tendered (which shall in no event exceed 90 days following the close of the related reporting period);

(v) Describe the type of inventory control and recordkeeping, including the specific records, to be maintained to support the reports of the shipping devices; and

(vi) Provide the location in the United States, including the name and address, where the records supporting the reports will be retained by law and will be made available for inspection and audit upon reasonable notice. (The records supporting the reports of the shipping devices must be kept for a period of at least 3 years from the date such reports are filed with the port director.)

(3) The application shall be filed along with a continuous bond containing the conditions set forth in § 113.66(c) of this chapter. If the application is approved by the port director and the conditions set forth in the application or of the bond are violated, the port director may issue a claim for liquidated damages equal to the domestic value of the container. If the domestic value exceeds the amount of the bond, the claim for liquidated damages will be equal to the amount of the bond.

(4) The port director receiving the application shall evaluate the program proposed to account for, report and maintain records of the shipping devices. The port director may suggest amendments to the applicant's proposal. The port director shall notify the applicant in writing of his decision on the application within 90 days of its receipt, unless this period is extended

for good cause and the applicant is so informed in writing. Approval of the application by the port director with whom it is filed shall be binding on all Customs ports nationwide.

(5) If the decision is to deny the application, in whole or in part, the port director shall specify the reason for the denial in a written reply, and inform the applicant that such denial may be appealed to the Assistant Commissioner, Office of Field Operations, Customs Headquarters, within 21 days of its date. The Assistant Commissioner's decision shall be issued, in writing, within 30 days of the receipt of the appeal, and shall constitute the final Customs determination concerning the application.

(6) If the application is approved, an importer may later apply to amend his application to add or delete particular types of shipping devices listed in the application in which the procedures set forth in the application may be utilized. If a requested amendment to an approved application should be denied, or if an approved application should be revoked, in whole or in part, by the port director, the procedures described in paragraph (b)(5) of this section shall apply.

(7) Application for and approval of a reporting program shall not limit or restrict the use of other alternative means for obtaining the release of holders, containers and shipping devices.

(c) In the case of serially numbered holders or containers of United States manufacture for which free clearance under subheading 9801.00.10, Harmonized Tariff Schedule of the United States, is claimed, the owner shall place thereon the following markings:

(1) 9801.00.10, unless the holder or container has permanently attached thereto the manufacturer's metal tag or plate showing, among other things, the name and address of the manufacturer who is located in the United States.

(2) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(3) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9801.00.10 * * * Zenda * * * 2468.

(d)(1) In the case of serially numbered holders or containers of foreign manufacture, other than those provided for in paragraph (d)(2) of this section, for which free clearance under the second provision in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, the owner shall place thereon the following markings:

(i) 9803.00.50.

(ii) The district and port code numbers of the port of entry, the entry number, and the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid.

(iii) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(iv) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9803.00.50 * * * 10–1–366–63 * * * Zenda * * * 2468.

(2) In the case of substantial holders or containers of either U.S. or foreign manufacture, specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 18,120 kilograms, for which duty-free entry is requested under either the first or the second proviso in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, only the following clear, conspicuous and durable markings are required to be on the container:

(i) The identity of the owner or operator of the container.

(ii) The serial number assigned by the owner or operator of the container, which shall be one of consecutive numbers and shall not be duplicated.

(e) The prescribed markings shall be clear and conspicuous, that is, they shall appear on an exposed side of the holder or container in letters and figures of such size as to be readily discernible. The markings will be stricken out or removed when the holders or containers are taken out of service or when ownership is transferred, except that appropriate changes may be made

if a new owner wishes to use the holders and containers under this procedure.

(f) The owner shall keep adequate records open to inspection by Customs officers, which shall show the current status of the serially numbered holders and containers in service and the disposition made of such holders and containers taken out of service.

(g) Nothing in this procedure shall be deemed to affect:

(1) The requirements for outward or inward manifesting of such holders or containers. The manifests will show for each holder or container its markings as provided for herein.

(2) The requirements of the Department of Commerce on exportation with respect to the filing of ''Shipper's Export Declaration,'' Form 7525–V.

(3) The treatment of articles covered herein under the coastwise laws of the United States, with particular reference to section 883, Title 46, United States Code.

(h) If the holder or container and its contents are to move in bond or under cover of a TIR carnet (see part 114 of this chapter) from the port of arrival intact, the holder or container shall appear on the inward foreign manifest so as to be related to the cargo contained therein and will be released under this procedure at a subsequent port. If the holder or container is to move in bond or under cover of a TIR carnet from the port of arrival not intact with its contents, the holder or container may appear on the inward foreign manifest separate from and not related to the cargo contained therein and will be released under this procedure at the port of arrival before it moves forward and will not appear on the in-bond document.

(i) A continuous bond containing the conditions set forth in § 113.66 of this chapter shall be filed with the port director. If the conditions are violated the port director shall issue a claim for liquidated damages equal to the domestic value of the holder or container established in accordance with section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). If the domestic value exceeds the amount of the bond the claim for liquidated damages will be equal to the amount of the bond.

[T.D. 56542, 30 FR 15143, Dec. 8, 1965, as amended by T.D. 71–70, 36 FR 4485, Mar. 6, 1971; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 86–13, 51 FR 4164, Feb. 3, 1986; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 96–20, 61 FR 7989, Mar. 1, 1996; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; T.D. 99–64, 64 FR 43265, Aug. 10, 1999]

ARTICLES FOR INSTITUTIONS

§ 10.43 Duty-free status.

(a) The port director may, at his discretion, require appropriate proof of duty-free status for articles for institutions claimed to be exempt from duty under subheadings 9810.00.05, 9810.00.15, 9810.00.25, 9810.00.30, 9810.00.40, 9810.00.45, 9810.00.50, 9810.00.55, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) Appropriate proof may be a copy of the charter or other evidence of the character of the institution for the use of which the articles are imported.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51249, Dec. 21, 1988]

§ 10.46 Articles for the United States.

Pursuant to subheadings 9808.00.10 and 9808.00.20, books, engravings, and other articles therein enumerated, which are imported by authority or for the use of the United States or for the use of the Library of Congress, shall be admitted free of duty upon the written request of the head of the bureau or executive department concerned.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67–108, 32 FR 6392, Apr. 25, 1967; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.47 [Reserved]

WORKS OF ART

§ 10.48 Engravings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the Customs officer is satisfied

that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry: A declaration in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, _____, do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely _____ covered by the annexed invoice dated _____; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(c) The port director may waive the declaration requirement set forth in paragraph (b) of this section.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the port director.

[T.D. 94–3, 58 FR 68742, Dec. 29, 1993]

§ 10.49 Articles for exhibition; requirements on entry.

(a) There shall be filed in connection with the entry of works of art and other articles claimed to be free of duty under Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS), a declaration by a qualified officer of the institution in sufficient detail to demonstrate entitlement to entry as claimed, and a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Claim for free entry under Chapter 98, Subchapter XII may be made for articles of the character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody.

(b) The port director may require a copy of the charter or other evidence of the character of the institution for which the articles are imported, and may also require the production of the original of any order given by such society or institution to any importing agent or dealer for such articles. The society or institution shall file, within 6 months after the date of filing the entry, any document or proof demanded by the port director in connection with the entry.

(c) Articles entered under subheading 9812.00.20, HTSUS, may be transferred from one institution to another upon an application in writing in the case of each transfer describing the articles and stating the name of the institution to which transfer is to be made, provided the sureties to the bond assent in writing under seal or a new bond is filed. No entry or withdrawal shall be required for such a transfer.

(d) If any of the articles accorded free entry under Chapter 98, Subchapter XII shall be sold, offered or exposed for sale, transferred, or used in any manner contrary to the provisions of the regulations in this part, within 5 years after the date of entry under such part, the amount of the duties shall be collected immediately by the director of the port of entry and deposited as duties. If the articles are exported or destroyed under Customs supervision within such 5-year period, the liability under the bond shall be treated as terminated.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 92–85, 57 FR 40605, Sept. 4, 1992]

§ 10.50 [Reserved]

§ 10.52 Painted, colored or stained glass windows for religious institutions.

When painted, colored, or stained glass windows or parts thereof, are claimed free of duty under subheading 9810.00.10, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), the port director may, at his discretion, require appropriate proof that the importation was designed by, and produced by or under the direction of, a professional artist, and that it is for the use of an institution established solely for religious purposes.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.53 Antiques.

(a) Articles accompanying a passenger and entitled to entry under the passenger's declaration and entry, or articles entered under an informal entry which are claimed to be free of duty under subheading 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS), may be admitted free of duty upon the execution of a declaration on the face of the entry provided that the passenger or person filing the informal entry is the owner of the articles and that they are for his personal use and not for sale or other commercial use and provided the Customs officer concerned is satisfied that the articles are of the requisite age.

(b) Antiques of the age prescribed by subheading 9706.00.00, HTSUS, or admitted under the provisions of paragraph (e) of this section, shall be admitted free of duty though repaired or renovated. If, however, an antique has been repaired with a substantial amount of additional material, without changing the original form or shape, the original and added portions shall be appraised and reported as separate entities and the basis for such report shall be plainly indicated on the invoice by the appraiser. In such cases duty shall be assessed on the portion added. If the repairs consist of an addition to an article of a feature which changes it substantially from the article originally produced, or if the antique portion has otherwise been so changed as to lose its identity as the article which was in existence prior to the time prescribed in subheading 9706.00.00, HTSUS, the entire article shall be excluded from free entry under subheading 9706.00.00, HTSUS.

(c) Except for furniture admitted under the provisions of paragraph (e) of this section, furniture claimed to be free of duty under subheading 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS) may be entered for consumption at any port of entry within the customs territory of the United States. Furniture as used in this section of the regulations is defined as 'movable articles of convenience or decoration for use in furnishing a house, apartment, place of business or accommodation'. This definition embraces most articles claimed to be free of duty as antiques.

(d) A claim for the free entry of an article under subheading 9706.00.00, HTSUS on the basis of antiquity may be made on the entry, or filed after entry at any time prior to liquidation of the entry, provided the article has not been released from Customs custody or it has been found upon examination before such release to be described in subheading 9706.00.00, HTSUS.

(e) Antique articles otherwise prohibited entry by the Endangered Species Act of 1973 (16 U.S.C. 1521, *et seq.*) may be entered if:

(1) The article is composed in whole or in part of any endangered or threatened species listed in 50 CFR 17.11 or 17.12,

(2) The article is not less than 100 years of age,

(3) The article has not been repaired or modified with any part of any such endangered or threatened species, on or after December 28, 1973,

(4) The article is entered at a port designated in § 12.26 of this chapter,

(5) A Declaration for Importation or Exportation of Fish or Wildlife (USFWS Form 3–177) is filed at the time of entry with the port director who will forward the form to the U.S. Fish and Wildlife Service, and

(6) The importer meets the requirements of paragraph (a) of this section.

(f) The additional duty imposed by additional U.S. Note 2, Chapter 97,

HTSUS, shall apply to any article which is imported for sale and claimed, either at the time of entry or at a later date, to be free of duty under subheading 9706.00.00, HTSUS, if such article is later found to be unauthentic in respect of the antiquity claimed as a basis for such free entry, unless the claim under subheading 9706.00.00, HTSUS, is withdrawn in writing before the examination of the article for the purpose of appraisement or classification has begun.

(g) The additional duty provided for in additional U.S. Note 2, Chapter 97, HTSUS shall not be assessed if the importer established by evidence satisfactory to the port director that the article was not imported for sale. In the case of any article imported in a passenger's baggage or entered under an informal entry, the Customs officer concerned may accept the statement of the owner that the article was not imported for sale if he is satisfied of the truth of such statement.

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.53, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 10.54 Gobelin and other hand-woven tapestries.

Pursuant to subheading 5805.00.10, Harmonized Tariff Schedule of the United States, Gobelin tapestries produced in the Manufacture Nationale des Gobelins factories at Paris and Beauvais under the direction and control of the French Government, and other hand-woven tapestries, shall be accorded free entry if of a kind fit only for use as wall hangings, and valued over $215 per square meter.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

VEGETABLE OILS

§ 10.56 Vegetable oils, denaturing; release.

(a) Olive, palm-kernel, rapeseed, sunflower, and sesame oil shall be classifiable under subheadings 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.20, 1512.19.20, 1513.29.00, 1514.90.10, 1514.90.50, 1515.50.00, Harmonized Tariff Schedule of the United States, if denatured abroad or under Customs supervision after importation but before release from Customs custody, at the request and expense of the importer, by a formula prescribed by Headquarters, U.S. Customs Service, or if by their method of production abroad they are rendered unfit for use as food or for any but mechanical or manufacturing purposes.

(b) Each cask or package of oil claimed to have been before importation denatured or otherwise rendered unfit for use as food or for any but mechanical or manufacturing purposes shall be sampled and tested by an appraising officer.

(c) Formulas prescribed by Headquarters, U.S. Customs Service, except proprietary mixtures, will be circulated to all Customs officers and will appear as abstracts of United States Customs Service decisions published in the weekly Customs Bulletins. Proprietary mixtures approved by the Commissioner of Customs will not be published but appropriate notice of their approval will be given to all Customs officers.

(d) The Headquarters, U.S. Customs Service, will from time to time prescribe additional formulas, and will consider any formula for special denaturing that may be submitted.

(e) The port director may, if he deems it advisable, require an importer requesting permission to use any authorized denaturant to submit to the appraiser an adequate sample of such denaturant, in order that the appraiser may report to the port director whether or not such denaturant is suitable for rendering the oil unfit for use as food or for any but mechanical or manufacturing purposes.

(f) No such oil shall be released free of duty until the appraiser shall have made a special report that it has been properly denatured.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66–182, 31 FR 11416, Aug. 30, 1966; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

POTATOES, CORN, OR MAIZE

§ 10.57 Certified seed potatoes, and seed corn or maize.

Claim for classification as seed potatoes under subheading 0701.10.00, as seed corn (maize) under subheading 1005.10., HTSUS, shall be made at the time of entry. Such classification shall be allowed only if the articles are white or Irish potatoes, or maize or corn, imported in containers and if, at the time of importation, there is firmly affixed to each container an official tag supplied by the government of the country in which the contents were grown, or an agency of such government. The tag shall bear a certificate to the effect that the specified contents of the container were grown, and have been approved, especially for use as seed. The tag shall also bear a number or other symbol identifying the potatoes or corn in the container with an inspection record of the foreign government or its agency on the basis of which the certificate was issued.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

BOLTING CLOTHS

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under subheading 5911.20.20, Harmonized Tariff Schedule of the United States, the cloth shall be indelibly marked from selvage to selvage at intervals of not more then 10.16 centimeters with ''bolting cloth expressly for milling purposes'' in block letters 7.62 centimeters in height. Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or dry materials mixed with water, if the water is merely a carrying medium.

(b) Bolting cloths not marked in the manner above indicated at the time of importation may be so marked by the importers in public stores under the supervision of customs officers.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

WITHDRAWAL OF SUPPLIES AND EQUIPMENT FOR VESSELS

§ 10.59 Exemption from customs duties and internal-revenue tax.

(a) A vessel shall not be considered to be actually engaged in the foreign trade, or in trade between the Atlantic and Pacific ports of the United States, or between the United States and its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, as the case may be, for the purpose of withdrawing supplies free of duty and internal-revenue tax pursuant to section 309(a), Tariff Act of 1930, as amended, unless it is—

(1) Operating on a regular schedule in a class of trade which entitles it to the privilege;

(2) Actually transporting passengers or merchandise to or from a foreign port, a port on the opposite coast of the United States, or between a port in a possession of the United States and a port in the United States or in another of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(3) Departing in ballast (without cargo or passengers) from one port for another, domestic or foreign, for the purpose of lading passengers or cargo at the port of destination for carriage in a class of trade specified in section 309(a), Tariff Act of 1930, as amended, for which class of trade the vessel is suitable and substantially ready for service with necessary fittings, outfit, and equipment already installed on its departure in ballast, and from which it is not diverted prior to carriage of passengers or cargo in such trade. A written declaration of the owner or agent of the vessel may be required in connection with the withdrawal, certifying to the vessel's suitableness and substantial readiness with necessary fittings, outfit, and equipment already installed on its departure in ballast for service in a class of trade specified in

section 309 and agreeing to notify the port director if it is laid up or diverted from such class of trade prior to the carriage of cargo or passengers in such trade.

(b) A withdrawal of articles may not be made under section 309, Tariff Act of 1930, as amended, for use on a trial or test trip of a vessel preparatory to its actually engaging in trades.

(c) The classes of articles which may be withdrawn as provided for by section 309, Tariff Act of 1930, as amended, include the containers in which the articles are withdrawn and laden even though for tariff purposes the containers are classifiable separately from their contents, except unusual containers within the purview of General Rule of Interpretation 5, Harmonized Tariff Schedule of the United States (HTSUS).

(d) For the purpose of allowing the privileges of section 309, Tariff Act of 1930, as amended, to aircraft as provided for therein, an aircraft shall be deemed to be a vessel within the meaning of each provision of this section and of §§ 10.60 through 10.64 which may be applied to aircraft.

(e) A documented vessel with a fisheries license endorsement and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), if the port director is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax. Such withdrawal shall be permitted only after the approval by the port director of a special written application, in triplicate, on Customs Form 5125, of the withdrawer, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter executed by the withdrawer. Such application shall be filed with Customs Form 7501 or 7512, as the case may be. The original and the triplicate copy of the application, after approval, shall be stamped with the withdrawal number and date thereof and shall be returned to the withdrawer for use as prescribed below. Approval of each such application shall be subject to the condition that the original and the triplicate copy shall be presented thereafter by the withdrawer or the vessel's master to the port director within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a Customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the articles until the port director is satisfied that all of them have been consumed on board, or landed under Custom's supervision, and takes up the original application. (The withdrawer shall retain the triplicate copy as evidence of consumption on board or landing under Customs supervision.) The approval shall be subject to the further conditions that any such withdrawn article remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the district director for the port or place of arrival shall deem necessary and that failure to comply with the conditions upon which a conditionally free withdrawal is approved shall subject the total quantity of withdrawn articles to the assessment and collection of an amount equal to the duties and taxes that would have been assessed on the entire quantity of supplies withdrawn had such supplies been regularly entered, or withdrawn, for consumption.

Exemption from internal-revenue tax on distilled spirits, alcohol, wines, and beer removed from any internal-revenue bonded warehouse, industrial alcohol premises, bonded wine cellar, or brewery; and drawback on taxpaid distilled spirits or wines removed from an export storage room, or on taxpaid beer removed from a brewery (or place of storage elsewhere), for use as supplies on vessels under section 309, Tariff Act of 1930, as amended, are governed by regulations of the Internal Revenue Service.

(f) Pursuant to section 309(d) of the Tariff Act of 1930, as amended, the Department of Commerce has found and advised the Secretary of the Treasury of the foreign countries which allow

privileges to aircraft registered in the United States substantially reciprocal to those described in sections 309 and 317 of the Tariff Act of 1930, as amended. Advices also have been received of changes and limitations of privileges allowed. In accordance with these advices, Treasury decisions are issued extending to the aircraft of foreign countries free withdrawal privileges reciprocal to those found by the Secretary of Commerce to be extended by those countries to aircraft registered in the United States or making changes in such privileges on the basis of new findings. Listed below by countries are the Treasury decisions issued pursuant to such findings which are currently in effect:

Country	Treasury Decision(s)	Exceptions if any, as noted—
Abu Dhabi	95–45	
Argentina	54925 (1) 92–20	Applicable only as to aircraft equipment, spare parts, and supplies.
Australia	54747 (1)	Not applicable to ground equipment.
Austria	80–68	
Bahamas	52798 (3)	
Bahrain	95–45	
Belgium	52846 (2)	
Benin	71–215,93-	
Bermuda	49944 (4)	
Brazil	53281 (2)	
Canada	69–149 69–245	Not applicable to ground equipment during period May 1 to September 16, 1969, inclusive.
Chile	66–128 (2)	
China*	82–91	
Colombia	70–107 (1)	
Costa Rica	53658 (1)	
Cuba	81–198	Applicable only as to aircraft supplies.
Czechoslovakia	70–107 (1)	
Denmark	51966 (3)	
Dominican Republic.	54522 (1)	
Ecuador	52510 (4)	
Egypt	74–3 85–141	
El Salvador	54675 (1)	
Finland	69–120 (2)	
France	67–96 (1)	Not applicable to tobacco products under section 317 of the tariff act. Not applicable to ground equipment.
Federal Republic of Germany.	69–150	Not applicable to ground equipment.
Greece	54847 (1)	
Guyana	78–28	
Honduras	71–154	
Iceland	67–265 (1)	
India	55155 (1)	
Indonesia	90–61	Applicable only as to aviation fuels and lubricants.
Iran	75–254	
Ireland	55291 (1)	
Israel	52831 (3)	
Italy	69–223	Not applicable to ground equipment.
Ivory Coast	71–215	
Jamaica	70–250	
Japan	53550 (1), 88–45	Not applicable to ground support equipment as of August 1, 1986
Jordan	74–102	
Kenya	71–102	Applicable only as to aircraft fuels and lubricants.
Lebanon	53902 (1)	
Luxembourg	89–77	Applicable only as to aviation fuels.
Mexico	54506 (5)	
Morocco	75–254	
Netherlands	52494 (2)	
Netherlands Antilles.	71–211	
New Zealand	73–52	Not applicable to ground equipment.
Nicaragua	54640 (1)	
Norway	51966 (3)	
Oman	95–45	
Pakistan	55416 (1)	
Panama	55453 (1)	
Peru	52911 (2)	
Poland	72–153	
Portugal	68–107 (1)	Not applicable to ground equipment.
Qatar	95–45	
Republic of Korea	71–140	
Republic of the Philippines.	71–197	
Romania	75–35	
Saudi Arabia	73–307, 92–68	
Senegal	71–215	
Singapore	93–25	
South Africa	69–162	Not applicable to ground equipment.
Spain	54522 (2)	
Sweden	51966 (3)	
Switzerland	56047	
Taiwan	70–107 (1), 82–91	Not applicable to ground equipment.
Tanzania	71–102	Applicable only as to aircraft fuels and lubricants.
Thailand	71–138, 89–6	
Trinidad and Tobago.	56441 (1)	
Turkey	89–7	
Uganda	71–102	Applicable only as to aircraft fuels and lubricants.
Union of Soviet Socialist Republics.	67–123 (1)	
United Kingdom	69–176	Not applicable to ground equipment.
Venezuela	55425 (1)	
Yugoslavia	71–138	
Zambia	89–5	

*See also Taiwan

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.59, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on Customs Form 7501. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from continuous Customs custody elsewhere than in a bonded warehouse shall be made on Customs Form 7512, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

(b) If the withdrawal is made by other than the principal on the warehouse or rewarehouse entry, as the case may be, the assent of such principal shall be endorsed on the withdrawal, unless the principal has otherwise authorized such withdrawal in writing.

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be taken when the withdrawal from warehouse is made by a person other than the principal on the warehouse or rewarehouse entry, as provided for in paragraph (b) of this section.

(d) Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under § 309, Tariff Act of 1930, as amended, when the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading. Three copies of the manifest on Customs Form 7512, in addition to six copies of the withdrawal on Customs Form 7501, shall be required. The procedure shall be the same as that prescribed in § 144.37 of this chapter (the six copies of Customs Form 7501 taking the place of the entry copies of Customs Form 7512).

(e) No bond shall be required in the case of war vessels.

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed, except that the bond required shall be on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in § 18.26 of this chapter shall be followed, except that the withdrawal when filed shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. There shall be such examination of the articles as may be necessary to satisfy the port director that they are subject to the privileges of section 309, Tariff Act of 1930, as amended, and that the value and quantity declared for them are correct.

(g) A withdrawal under § 10.59(e) shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(h) If a request is made for permission to transfer supplies or stores from one vessel to another which would be entitled to withdraw them free of duty and tax under section 309 or 317, Tariff Act of 1930, as amended, the port director in his discretion may permit the articles to be so transferred under Customs supervision under a permit on Customs Form 3171 in lieu of a formal withdrawal under the pertinent statute. In such a case, the pertinent statute shall be indicated by an endorsement made on the permit by the port director.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 73–312, 38 FR 30882, Nov. 8, 1973; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 96–18, 61 FR 6777, Feb. 22, 1996]

§ 10.61 Withdrawal permit.

Upon the filing of the withdrawal and the execution of the bond, when required, the port director shall issue a permit on Customs Form 7501 or 7512.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309).* Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), when all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7501, either single or blanket, may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in § 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7501 shall include the following additional information:

(1) Type of oil withdrawn.

(2) Number or other identification of sales order therefor.

(3) Name of bonded carrier, date it received oil.

(4) Receipt signed by master or other person in charge of delivering conveyance identified by number, or name, and if Customs bonded lighterman or cartman, by the carrier's license number.

(5) Name and location of vessel obtaining oil.

(6) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline from the bonded storage tank, paragraphs (a) (3) and (4) of this section shall be deemed to be inapplicable.

(b) If a blanket free withdrawal of bunker fuel oil is filed, to comply with Bureau of the Census requirements the withdrawal on Customs Form 7501 shall be endorsed ''Estimated Withdrawals'' and limited to the aggregate quantity and value of fuel oil which it is estimated will be physically removed from Customs bond during the calendar month in which the withdrawal is filed for lading on vessels entitled to duty-free vessel supplies under section 309 of the Tariff Act of 1930, as amended.

(c)(1) As an incident of the delivery of fuel oils classifiable at different rates of duty to a vessel or vessels under section 309 of the tariff act, the port director may, when necessary to enable a supplier to meet fuel specifications, permit the blending of the oils in the delivering conveyance or in other suitable facilities after withdrawal from the bonded tanks, upon the condition that, to the extent of the amount of oil withdrawn classifiable at the higher rate, duty at the higher rate will be paid on any portion of the blended fuel oil not delivered within a reasonable time to a qualified vessel. The withdrawer shall be required to file a withdrawal for consumption for the excess quantity withdrawn. For example, if the quantity withdrawn consists of 1,500 barrels of bunker C fuel oil classifiable at the rate of one-eighth cent per gallon and 500 barrels of diesel oil classifiable at the rate of one-fourth cent per gallon but only 1,400 barrels of the blended oil are actually laden as fuel supplies on qualified vessels, withdrawals for consumption are required for 500 barrels of diesel oil at the higher rate and for 100 barrels of bunker C fuel oil at the lower rate.

(2) *Delivering transferer receipt.* The receipt of the delivering carrier on a copy of Customs Form 7501 for fuel oil which has been blended under paragraph (c)(1) of this section with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

(d) Fuel oil withdrawn as vessel supplies at one port may be laden at another port on a vessel or vessels entitled to the free withdrawal privileges of section 309 of the tariff act, under procedures prescribed in this section,

provided the movement to the receiving vessel or vessels is under the bond of a qualified carrier as described in § 18.1(a) of this chapter. In such cases, the provisions of § 10.60(d) of this chapter shall be deemed inapplicable.

(e) If a vessel not entitled to duty-free withdrawal of supplies from Customs bonded warehouses under section 309 of the Tariff Act of 1930, as amended, should be supplied with fuel oil from a Customs bonded tank described in paragraph (a) of this section because of an emergency, a duty paid withdrawal therefor shall be filed on the first day that the customhouse is open for the general transaction of business after the day on which the oil is laden on the using vessel. If there should be willful or repeated instances of late filing of a duty-paid withdrawal in such cases, the port director shall require a duty-paid withdrawal to be filed prior to the removal of fuel oil from the bonded tank.

(f) When the procedures prescribed in this section are followed, representatives of the port director will from time to time verify various withdrawals against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of the oil. The withdrawer shall maintain all pertinent records relating to the withdrawal, delivery, or receipt of the fuel oil for 5 years from the date of liquidation of the related fuel oil entry.

[T.D. 69–99, 34 FR 6520, Apr. 16, 1969, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 82–204, 47 FR 49367, Nov. 1, 1982; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 96–18, 61 FR 6777, Feb. 22, 1996; T.D. 96–51, 61 FR 31395, June 20, 1996; T.D. 99–33, 64 FR 16347, Apr. 5, 1999]

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally*. Under this section, a blanket withdrawal on Customs Form 7501 may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release*. A partial release on Customs Form 7501, in duplicate, or in triplicate if an extra copy is required by the port director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document.

[T.D. 82–204, 47 FR 49367, Nov. 1, 1982, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.62b Aircraft turbine fuel.

(a) *General*. Unless otherwise provided, aircraft turbine fuel withdrawn from a Customs bonded warehouse for use under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), may be commingled with domestic or other aircraft turbine fuel after such withdrawal only if such commingling is approved by the appropriate Customs official for the port where the commingling occurs. The appropriate Customs official may approve such commingling if the fueling system in which the commingling will occur contains adequate physical safeguards to prevent the possible unauthorized entry into the Customs territory of the bonded fuel. Such commingled fuel must be accounted for in the same 24-hour period in which it was commingled and must be—

(1) Exported within that 24-hour period;

(2) Used under section 309 within that 24-hour period; or

(3) Entered or withdrawn for consumption, with duty deposited, as required under the applicable regulations (see part 144 of this chapter).

(b) *Duty-free withdrawal from warehouse of aircraft turbine fuel under section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a))*. Turbine fuel intended for use as supplies on aircraft under section 309, Tariff Act of 1930, as amended, and withdrawn from a Customs bonded warehouse shall be entitled to the privileges provided for in section 309 if an amount equal to or exceeding the quantity of such fuel is established, as provided for in paragraph (c) of this section, to have been used on aircraft qualifying for the privileges provided for in section 309 within 30 days after the withdrawal of the fuel from the Customs bonded warehouse. Withdrawal of aircraft turbine fuel under this paragraph shall be in accordance with the procedures in §§ 10.59 through 10.64, unless otherwise provided in this section. Withdrawals under this paragraph shall be annotated with the term ''Withdrawal under 19 CFR 10.62b(b)''.

(c) *Establishment of use of fuel by qualifying aircraft*. (1) The person withdrawing aircraft turbine fuel under paragraph (b) of this section must establish that an aircraft qualifying for the privileges provided for in section 309, Tariff Act of 1930, as amended, used fuel in an amount equal to or exceeding the quantity of the fuel withdrawn that is not entered and upon which duties are not paid by submitting to Customs, at the port where the bonded warehouse entry was filed, within the time provided in paragraph (d) of this section, either—

(i) Records prepared in the normal course of business effecting the transfer to identified (*e.g.*, by aircraft company name, flight number, flight origin and destination, and date of flight) aircraft of fuel in an amount equal to or exceeding the quantity of the fuel withdrawn which is not entered and on which duties are not paid and objective evidence that the aircraft to which the fuel was transferred were actually used in trade qualifying for the privileges provided in section 309, Tariff Act of 1930, as amended; or

(ii) A certification (documentary or electronic) that:

(A) All of the fuel withdrawn was intended for use on aircraft entitled to the privileges provided for in section 309;

(B) Within 30 days of the date of withdrawal from warehouse, an amount of fuel equal to or exceeding the quantity of the fuel withdrawn which is not entered and on which duties are not paid was transferred as supplies to aircraft entitled to the privileges provided for in section 309;

(C) All of the aircraft into which fuel is loaded hereunder were used in a trade provided for in section 309; and

(D) The person making the certification possesses evidence (documentary or electronic) available for Customs inspection at a named place which supports each of the above statements.

(2) Upon request by Customs, the person who submits the certification provided for in paragraph (c)(1) of this section shall promptly provide the evidence required to support the claim for treatment under this section (including the records described in § 10.62b(c)(1)(i)) and §§ 10.62 and 19.6(d) and each of the statements in the certification.

(d) *Time for establishment of use of fuel by qualifying aircraft*. The person withdrawing aircraft turbine fuel under paragraph (b) of this section shall submit the records or certification provided for in paragraph (c) of this section by the 40th day after the date of withdrawal of the fuel unless the fuel was withdrawn under a blanket withdrawal under paragraph (g) of this section. If the fuel was withdrawn under a blanket withdrawal, the person withdrawing aircraft turbine fuel under this section shall submit the records or certification provided for in paragraph (c) of this section by the 40th day after all of the fuel covered by the blanket permit to withdraw has been withdrawn.

(e) *Treatment of turbine fuel withdrawn but not used on qualifying aircraft within 30 days*. If turbine fuel is withdrawn from a Customs bonded warehouse under paragraph (b) of this section but fuel in an amount less than the quantity withdrawn is established to have been used within 30 days of the date of withdrawal from warehouse on aircraft qualifying for the privileges provided for in section 309, Tariff Act of 1930, as amended, a withdrawal for consumption shall be filed and duties shall be

deposited for the excess of fuel so withdrawn over that used on aircraft so qualifying. Such withdrawal shall be filed and such duties shall be deposited by the 40th day after the date of withdrawal of the fuel in accordance with the procedures in § 144.38 of this chapter. Interest shall be payable and deposited with such duties, calculated from the date of withdrawal at the rate of interest established under 26 U.S.C. 6621.

(f) *Liquidated damages.* Failure to account for turbine fuel withdrawn under paragraphs (b) through (h) of this section shall result in liquidated damages against the person withdrawing the turbine fuel, as provided for under § 113.62 of this chapter. Such failure to account for turbine fuel includes:

(1) The failure to timely file the withdrawal for consumption and payment of duty, with interest, on the quantity of fuel so withdrawn in excess of the quantity of fuel established to have been used on qualifying aircraft within 30 days of withdrawal, as provided for in paragraph (e) of this section;

(2) The failure to timely file the evidence or certification establishing such use of the fuel which is not entered and on which duties are not paid, as provided for in paragraph (c) of this section; or

(3) The failure to promptly provide the evidence required to support the claim for treatment under paragraph (b) of this section, upon request by Customs, as provided for in paragraph (c)(2) of this section.

(g) *Blanket withdrawals.* Blanket withdrawals, as provided for in §§ 10.62 and 19.6(d), may be used for withdrawals from warehouse under section 557(a), Tariff Act of 1930, as amended, and paragraphs (b) through (h) of this section, under the procedures provided in §§ 10.62 and 19.6(d) except that—

(1) Application by the withdrawer for a blanket permit to withdraw shall be on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, annotated with the words ''Some or all of the merchandise will be withdrawn under blanket permit per §§ 10.62, 10.62b, and 19.6(d).'';

(2) Turbine fuel withdrawn under a blanket permit as authorized in this paragraph may be delivered at a port other than the port of withdrawal;

(3) Customs acceptance of a properly completed application for a blanket permit to withdraw, on the warehouse entry or warehouse entry/entry summary, will constitute approval of the blanket permit to withdraw;

(4) A copy of the approved blanket permit to withdraw will be delivered to the warehouse proprietor, whereupon fuel may be withdrawn under the terms of the blanket permit;

(5) The withdrawal document to be placed in the proprietor's permit file folder (see § 19.6(d)(2)) will be a commercially acceptable document of receipt (such as a ''withdrawal ticket'') issued by the warehouse proprietor, identified with a unique alpha-numeric code and containing the following information:

(i) Identity of withdrawer;

(ii) Identity of warehouse and tank from which fuel is withdrawn;

(iii) Date of withdrawal;

(iv) Type of merchandise withdrawn; and

(v) Quantity of merchandise withdrawn.

(6) The date of withdrawal, for purposes of calculating the 30-day period in which fuel must be used on qualifying aircraft under this section, shall be the date on which physical removal of the fuel from the warehouse commences;

(7) The blanket permit summary prepared by the proprietor as provided for in § 19.6(d)(4) shall be prepared when all of the fuel covered by the blanket permit has been withdrawn and shall account for all merchandise withdrawn under the blanket permit, as required by § 19.6(d)(4), by stating, in summary form, the unique alpha-numeric codes and information required in paragraph (g)(5) of this section, as well as the identity of the warehouse entry to which the withdrawal is attributed;

(8) The certification on the blanket permit summary (see § 19.6(d)(4)) shall be that the merchandise listed thereunder was withdrawn in compliance with §§ 10.62, 10.62b, and 19.6(d); and

(9) The person withdrawing aircraft turbine fuel under these blanket procedures shall submit the records or certification provided for in § 10.62b(c) by

the 40th day after all of the fuel covered by the blanket permit has been withdrawn (see § 10.62b(d)). At the discretion of the port director for the port where blanket withdrawal was approved, submission of the records and evidence required to establish use of the fuel on qualifying aircraft may be required to be submitted electronically, in a format compatible with Customs electronic record-keeping systems.

(h) *Recordkeeping*. The person withdrawing aircraft turbine fuel from warehouse under this section is subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 162 of this chapter.

[T.D. 96–18, 61 FR 6778, Feb. 22, 1996, as amended by T.D. 99–33, 64 FR 16347, Apr. 5, 1999]

§ 10.63 Landing of supplies and stores from receiving vessel in the United States.

Supplies or stores laden on a vessel duty and tax free under section 309, Tariff Act of 1930, as amended, may be landed under Customs supervision under proper permit, the same as if they had been laden in a foreign country. See § 4.39 of this chapter. Except when transfer to another vessel entitled to the free withdrawal privilege is permitted under the original withdrawal under section 309, Tariff Act of 1930, as amended, the landed articles shall be treated as an importation from a foreign country.

[28 FR 14663, Dec. 31, 12963, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.64 Crediting or cancellation of bonds.

(a) Except as stated below, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter may be credited or canceled in respect of such articles upon the vessel's departure from the port of lading in a class of trade or business entitling the articles to exemption from duty and tax under the statute. The withdrawer shall cause the merchandise to be delivered to the lading vessel, and shall provide such evidence of lading as required by the port director within 30 days after lading, except as provided in this section. If the vessel is not operated by the United States and proceeds in ballast from the port where the articles are laden to another port to lade passengers or cargo for carriage in a class of trade specified in section 309, Tariff Act of 1930, as amended, the bond may be credited or canceled upon the filing with the director of the port of withdrawal within 3 months after the date of withdrawal of a proper declaration as prescribed below. The declaration shall be executed by one of the following who has knowledge of the facts:

(1) The operations manager or port captain for the vessel on which the articles are laden but not a representative of the supplier.

(2) The master or other officer of the vessel on which the articles are laden. The declaration shall be in substantially the following form:

I, _____

(Operations manager, port captain, master, or other officer) of the vessel _____ declare that I have knowledge of the facts set forth herein, and that upon the lading of the articles described below covered by withdrawal No. _____, filed at _____(Name of port), the vessel then proceeded in ballast to _____(Name of port) to lade cargo or passengers; that the vessel was suitable for service in the class of trade checked below with fittings, outfit, and equipment for such trade already installed when it so departed in ballast; and that upon arrival it proceeded to engage in the carriage of cargo or passengers in such trade, except as stated below:

_____

(If no exception, note ''None'')

1. Foreign Trade.
2. Trade between Atlantic and Pacific ports of the United States, when such trade is not prohibited by coastwise laws.
3. Trade between the United States and any of its possessions, when such trade is not prohibited by coastwise laws.
4. Trade between Alaska or Hawaii and any other part of the United States, when such trade is not prohibited by coastwise laws.

Description of articles:

_____

_____

_____

_____

_____

(Name and title)

(b) A declaration as to the intended business or trade of a vessel may, in the discretion of the port director, be accepted in lieu of a declaration prescribed in paragraph (a) of this section when the amount of duty or tax, or both, involved in a single lading is less than $100.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984]

§ 10.64a [Reserved]

§ 10.65 Cigars and cigarettes.

(a) Imported cigars and cigarettes in bonded warehouse or otherwise in Customs custody, and such articles manufactured with the use of imported materials in a bonded manufacturing warehouse of class 6, may be withdrawn under section 317, Tariff Act of 1930, as amended, for consumption beginning beyond the 3-mile limit or international boundary, as the case may be, (1) on vessels actually engaged in the foreign, intercoastal, or noncontiguous territory trade within the purview of § 10.59(a); (2) on vessels departing from the port where the withdrawal is made directly for a foreign port, a port on the opposite coast, or a port in one of the possessions of the United States; or (3) on vessels of war or other governmental activity.

(b) The privilege shall not be granted to vessels stationed in American waters for an indefinite period without sailing schedules, nor shall it be granted to aircraft of foreign registry of a country for which there is not in effect a finding and advice by the Department of Commerce under section 309(d), Tariff Act of 1930, as amended, that such country allows privileges to aircraft registered in the United States substantially reciprocal to those described in section 317, Tariff Act of 1930, as amended. See section 10.59(f).

(c) With the following additions and exceptions, the same procedure shall be followed as in the case of withdrawals under section 309(a), Tariff Act of 1930, as amended.

(1) No bond shall be required in the case of vessels operated by the United States Government.

(2) When a shipping case containing cigars and cigarettes is made up of a number of units, each in a separate package, such units may be withdrawn separately, provided each unit is marked and numbered for identification and contains not less than 250 cigars or 1,000 cigarettes. In the case of imported cigars and cigarettes so packed, only one unit from each shipping case shall be opened for examination, unless the port director shall deem it necessary for the protection of the revenue to examine a greater quantity. Imported tobacco products on which the duty or internal-revenue tax has been paid may not be withdrawn under section 317, Tariff Act of 1930, as amended, with a drawback of such duty or internal-revenue tax.

(3) When all the units in such shipping case are not to be withdrawn at the same time or for use on the same vessel, a blanket withdrawal may be filed for the entire case in lieu of a separate withdrawal for each unit. In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, when required, shall be filed at the time of or prior to the removal of any of the merchandise from the warehouse for delivery to the vessel on which it is to be used.

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn. If, at the time of any such inventory, any merchandise is missing and not properly accounted for, duties shall be paid thereon before any further withdrawals are permitted.

(5) The declaration of use, when required, shall include a statement that consumption of the articles covered by the withdrawal did not begin until the

withdrawing vessel or aircraft had proceeded beyond the 3 mile limit or the international boundary.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67–193, 32 FR 11764, Aug. 16, 1967; T.D. 70–73, 35 FR 5400, Apr. 1, 1970; T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

ARTICLES EXPORTED FOR EXHIBITION, ETC.

§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedure on entry.

(a) In connection with the entry of articles, including livestock or other animals, exported for temporary exhibition and returned and claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS), there shall be filed:

(1) A certificate of exportation on Customs Form 3311;

(2) A declaration of the importer on Customs Form 4455 for articles of either domestic or foreign origin; and

(3) In the case of animals of foreign origin taken abroad for exhibition in connection with a circus or menagerie, a copy of an inventory of these animals filed prior to their leaving the country with the director of the port of their departure.

(b) If it is shown to be impracticable to produce the certificate of exportation required under paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation, or may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the production of such certificate or other evidence.

(c) Articles claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), may be returned free of duty without formal entry and without regard to the requirements of paragraph (a) or (b) of this section if:

(1) Prior to the exportation of such articles, an application on Customs Form 4455 (accompanied by an appropriate inventory, when required by law or by the port director) is filed with a declaration thereon that:

(i) Any right to drawback of Customs duties with respect to that shipment was waived;

(ii) Any internal revenue tax due has been paid and no refund thereof will be sought; and

(iii) The merchandise was identified, registered, and exported in accordance with the regulations set forth in §§ 10.8(e), (g), (h), and (i), governing the exportation of articles sent abroad for repairs, and

(2) Upon return, a duplicate Customs Form 4455 (with accompanying inventory where one was required) is filed.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74–242, 39 FR 33794, Sept. 20, 1974; T.D. 75–235, 40 FR 44319, Sept. 26, 1975; T.D. 78–153, 43 FR 23709, June 1, 1978; T.D. 82–224, 47 FR 53727, Nov. 29, 1982; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993]

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

(a) In connection with each entry of articles exported for scientific or educational purposes and returned under subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS), the following shall be required, irrespective of the value of the shipment:

(1) A certificate of exportation on Customs Form 3311;

(2) A declaration by the foreign shipper in the same form as that prescribed in § 10.66(a)(2) but stating that such articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

(3) A declaration of the ultimate consignee in substantially the following form:

Port of _____, Port Director's Office, _____, 19____.

I, _____, declare that the several articles described in the annexed entry are, to the best of my knowledge and belief, the identical articles exported from the United States on the _____ day of _____, 19____, by _____ (Actual shipper) address _____, for the account of _____, address

_____that they are returned to _____, address _____, for the account of _____, address _____ that the said articles were exported solely for temporary scientific or educational purposes and for no other use abroad than for exhibition, examination, or experimentation; that they are being returned without having been changed in condition in any manner, except by reason of their bona fide use as follows:

_____

(Describe change in condition)

_____

_____

(Ultimate consignee)

(b) If it is shown to be impracticable to produce the certificate of exportation required by paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation. The port director may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the subsequent production of any of the evidence or documents required by paragraph (a) of this section which are not available at the time of entry.

(c) If, prior to the exportation of articles claimed to be exempt from duty under subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS), an application on Customs Form 4455 (accompanied by an appropriate inventory when, in the discretion of the port director, such inventory is deemed necessary) was filed, such articles may be returned for the account of the exporter free of duty without formal entry, without regard to the requirements of paragraphs (a) and (b) of this section, upon the filing of the duplicate Customs Form 4455 (with accompanying inventory, if one was required), and a declaration of the ultimate consignee in substantially the form set forth in paragraph (a)(3) of this section.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74–242, 39 FR 33794, Sept. 20, 1974; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

THEATRICAL EFFECTS, MOTION-PICTURE FILMS, COMMERCIAL TRAVELERS' SAMPLES, AND TOOLS OF TRADE

§ 10.68 Procedure.

(a) Theatrical scenery, properties, and effects, motion-picture films (including motion-picture films taken aboard a vessel for exhibition only during an outward voyage and returned for the same purpose during an inward voyage on the same or another vessel), commercial travelers' samples, and professional books, implements, instruments, and tools of trade, occupation, or employment (see § 148.53 of this chapter), of domestic or foreign origin, taken abroad may be returned without formal entry and without payment of duty if an exportation voucher from a carnet, when applicable, or an application on Customs Form 4455 was filed, and the merchandise was identified as set forth in § 10.8, before exportation of the articles. Articles exported under cover of an A.T.A. carnet (where the carnet serves as the control document) may, in accordance with this paragraph, be returned without entry or the payment of duty. If Customs Form 4455 is utilized, commercial travelers' samples, professional books, implements, instruments, and tools of trade, occupation, or employment may be returned with either an informal entry or a declaration on Customs Form 3299; theatrical scenery, properties, and effects and motion-picture films may be returned only with an informal entry. When articles other than those exported by mail or parcel post are examined and registered at one port and exported through another port, the port director may require proof of exportation in those cases where the carnet or Customs Form 4455 does not reflect that these articles were exported under Customs supervision. In the case of commercial travelers' samples taken abroad for temporary use, except where exportation involves certification of a carnet, port directors may waive examination of the samples at the time of exportation. When motion-picture films are to be taken aboard a vessel for exhibition only during an outward voyage and are to be returned for the same purpose during an inward voyage

on the same or another vessel, port directors may waive examination and supervision at the time of exportation. When theatrical scenery, properties, and effects are taken abroad in sealed carload lots by rail for temporary use, the cars must be sealed by U.S. Customs officers for entry at any Canadian or Mexican port where U.S. Customs officers are stationed. Application and examination before the time of exportation is waived if a Customs Form 4455 is filed with the U.S. Customs officer in the appropriate Canadian or Mexican port, and that officer examines the articles before they are released from foreign customs custody by the foreign customs officer.

(b) When any such articles are to be returned to the United States from a contiguous foreign country in which a United States Customs officer is stationed, the articles may be presented to such officer with the duplicate copy of the application for examination and comparison with the descriptive list. Upon completion of such examination, the packages containing the articles shall be corded and sealed or forwarded in cars sealed by Customs officers and shall be manifested in the same manner as personal baggage. Articles so treated shall be released upon arrival in the United States and removal of the seals by Customs officers.

(c) When commercial travelers' samples consisting of raw cotton are taken to and returned from Canada, the application on Customs Form 4455 shall be executed in triplicate, two copies thereof to be returned to the traveler for surrender to the Customs officer on the return of the samples from Canada.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9801, June 25, 1969; T.D. 75–41, 40 FR 6646, Feb. 13, 1975; T.D. 82–49, 47 FR 12160, Mar. 22, 1980; T.D. 82–116, 47 FR 27261, June 24, 1982]

§ 10.69 Samples to Great Britain and Ireland under reciprocal agreement.

Descriptive lists of samples taken to Great Britain and Ireland by commercial travelers of the United States under the joint declarations of December 3 and 8, 1910 (State Department treaty series 552), shall be required in triplicate, verified by the affidavit of the commercial traveler before a Customs officer, and shall show that the samples are for use as models or patterns for the purpose of obtaining orders and not for sale and that the lists contain a full description of the articles. One copy shall be retained and the others shall be delivered to the commercial traveler—one for the identification of the samples on their return to the United States and one for the use of the foreign customs authorities. The latter copy must have been attested by a consular officer of the country concerned in the United States.

ANIMALS AND BIRDS

CROSS REFERENCE: For regulations with respect to recognition of breeds and purebred animals, see 9 CFR part 151.

§ 10.70 Purebred animals for breeding purposes; certificate.

(a) In connection with the entry of purebred animals for breeding purposes under subheading 0101.11.00, Harmonized Tariff Schedule of the United States (HTSUS), no claim for free entry shall be allowed in liquidation of the entry until the port director has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed. Importers are required by regulation of the Department of Agriculture to make application for a certificate of pure breeding to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, on ANH Form 17–338 before the animal will be examined as required by 9 CFR 151.7. Application for the certificate must be executed by the owner agent, or importer and filed at a port of entry designated in the regulations of the Department of Agriculture for the importation of animals (9 CFR 92.3). However, applications for certificates for dogs (other than dogs for handling livestock regulated under 9 CFR 92.18) and cats may be filed either at a designated port of entry or at any other port where Customs entry is

made. The regulations of the Department of Agriculture prescribing the requirements for the issuance of certificates of pure breeding provide that all animals imported under such regulations must be accompanied to the port at which examination is to be made by certificates of pedigree and transfer of ownership in order that identification may be accomplished, and that, if such animals are moved from such port prior to the presentation of such certificates and transfers, such action shall constitute a waiver of any further claim to certification under such regulations.

(b) In the cases of cats and dogs arriving at Canadian border ports, Customs officers and employees are hereby authorized and directed to make the examination required by such regulations of the Department of Agriculture. Customs officers and employees are also authorized and directed to make such examinations at the ports of New York and Boston, provided the dog or cat is brought into the United States by a passenger. At all airports, Customs officers shall make the examination of dogs and cats, whether or not accompanied by the owners, if there is no inspector of the Department of Agriculture stationed there or on duty at the time of arrival.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–154, 33 FR 8730, June 14, 1968; T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.

(a) The animal may be released from Customs custody upon the furnishing by the importer of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of (1) a certificate of pure breeding issued by the Department of Agriculture, and (2) the declaration required by § 10.70(a) submitted in letter form if such declaration was not filed at the time of entry. The release of the animal from customs custody requires the presentation of the pedigree certificate and evidence of transfer of ownership in accordance with the regulations of the Department of Agriculture mentioned in § 10.70(b).

(b) Charges against the bond shall be canceled only upon the production of the required evidence or on payment of duties.

(c) In cases where the pedigree certificate and evidence of transfer of ownership have been presented in accordance with the regulations of the Department of Agriculture, the importer, if he so elects, may, in lieu of giving a bond, deposit estimated duties and file a stipulation with the port director within 10 days after the date of entry to produce the declaration and certificate of pure breeding within 6 months from the date of entry, whereupon the liquidation of the entry shall be suspended. (See § 113.42 of this chapter.)

(d) If the pedigree certificate and evidence of transfer of ownership were not presented in accordance with such regulations of the Department of Agriculture, a deposit of estimated duties, in addition to the regular entry bond, shall be required.

(e) When a passenger arriving in the United States with one or more dogs or cats and with the required certificates of pedigree and transfers of ownership in his possession furnishes a properly executed declaration as required by § 10.70(a) along with an application to the Department of Agriculture on ANH Form 17–338 for a certificate of pure breeding, the entry of the animal(s) as duty-free under subheading 0106.00.50, Harmonized Tariff Schedule of the United States (HTSUS), may be made on the passenger's baggage declaration if the value of the animals does not exceed $500. In such case the entry shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of a certificate of pure breeding. The bond shall be without surety or cash deposit unless the port director on the basis of information before him finds that a

bond with surety or a cash deposit is necessary to protect the revenue.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–79, 33 FR 4461, Mar. 13, 1968; T.D. 68–154, 33 FR 8731, June 14, 1968; T.D. 74–227, 39 FR 32015, Sept. 4, 1974; T.D. 78–99 43 FR 13060, Mar. 29, 1978; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§§ 10.72–10.73 [Reserved]

§ 10.74 Animals straying across boundary for pasturage; offspring.

When domestic animals for which free entry is to be claimed under subheading 9801.00.90, Harmonized Tariff Schedule of the United States, have strayed across the boundary line, they may be returned, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required. The owner of any such animal shall report its return to the nearest Customs office and hold it for such inspection and treatment as may be deemed necessary by a representative of the Animal and Plant Health Inspection Service of the Department of Agriculture. Any such arrival found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to 18 U.S.C. 545.

[T.D. 87–75, 52 FR 20067, May 29, 1987, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.75 Wild animals and birds; zoological collections.

When wild animals or birds are claimed to be free of duty under subheading 9810.00.70, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), the port director may, at his discretion, require appropriate proof that the animals or birds were specially imported pursuant to negotiations conducted prior to importation for the delivery of animals or birds of a named species meeting agreed specifications of reasonable particularity and that they are intended at the time of importation for public exhibition in a collection maintained for scientific or educational purposes and not for sale or for use in connection with any enterprise conducted for profit. The fact that an animal or bird may have been sent on approval shall not preclude free entry under subheading 9810.00.70, HTSUS, when it is actually accepted as a part of the zoological collection and so exhibited.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.76 Game animals and birds.

(a) The following classes of live game animals and birds may be admitted free of duty for stocking purposes under the provisions of subheading 9817.00.70 without reference to the United States Customs Service, if the requirements of the Fish and Wildlife Service, Department of the Interior, have been complied with.

ANIMALS

1. Cervidae, commonly known as deer and elk.
2. Leporidae, commonly known as rabbits.
3. Sciuridae, commonly known as squirrels.

BIRDS

1. Anatidae, commonly known as ducks and geese.
2. Gallinae, commonly known as turkeys, grouse, pheasants, partridges, and quail.
3. Otididae, commonly known as bustards.
4. Tinamidae, commonly known as tinamous.

(b) Application for the free entry of other live animals or birds under subheading 9817.00.70, Harmonized Tariff Schedule of the United States shall be referred to the United States Customs Service for consideration. Animals imported for fur-farming purposes shall not be admitted free of duty under that paragraph.

(c) [Reserved]

(d) Game animals and birds killed in foreign countries by residents of the United States, if not imported for sale or other commercial purposes, may be admitted free of duty without entry, if the person has no merchandise requiring a written declaration upon the filing of a declaration on U.S. Fish and Wildlife Service Form 3–177, Declaration for Importation or Exportation of

Fish or Wildlife. No bond or cash deposit to insure the destruction or exportation of the plumage of such birds shall be required.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 86–118, 51 FR 22515, June 20, 1986; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990]

§ 10.77 [Reserved]

PRODUCTS OF AMERICAN FISHERIES

§ 10.78 Entry.

(a) No entry shall be required for fish or other marine products taken on the high seas by vessels of the U.S. or by residents of the U.S. in undocumented vessels owned in the U.S. when such fish or other products are brought into port by the taking vessel or are transferred at sea to another fishing vessel of the same fleet and brought into port.

(b) An American fishery, within the meaning of Subchapter XV of Chapter 98, Harmonized Tariff Schedule of the United States, is defined as a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof.

(c) The employment of citizens of a foreign country by an American fishery is permissible but the purchase by an American fishery of fish or other marine products taken by citizens of a foreign country on the high seas or in foreign waters will subject such fish or other marine products to treatment as foreign merchandise.

(d) Products of an American fishery shall be entitled to free entry although prepared, preserved, or otherwise changed in condition, provided the work is done at sea by the master or crew of the fishery or by persons employed by and under the supervision of the master or owner of the fishery. Fish (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish) the product of an American fishery landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen and with fins removed, shall be entitled to free entry, whether or not such processing is done by the American fishery. Products of an American fishery prepared or preserved on the treaty coasts of Newfoundland, Magdalen Islands, or Labrador, as such coasts are defined in the Convention of 1818 between the United States and Great Britain, shall be entitled to free entry only if the preparation or preservation is done by an American fishery.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.79 [Reserved]

SALT FOR CURING FISH

§ 10.80 Remission of duty; withdrawal; bond.

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish in the shores of the navigable waters of the U.S., whether such fish are taken by licensed or unlicensed vessels, and upon proof that the sale has been used for either of such purposes, the duties on the same shall be remitted. (Section 313(e), Tariff Act of 1930, 19 U.S.C. 1313(e)). Imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on Customs Form 7501. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of proof of proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be issued on Customs Form 7501.

[T.D. 89–1, 53 FR 51251, Dec. 21, 1988, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.81 Use in any port.

(a) Salt withdrawn under bond for use in curing fish on the shores of navigable waters may be used for such purpose at any port, but the evidence of use in such cases shall be submitted through the director of the port where the salt was used.

(b) If desired, salt to be used in curing fish on shore at another port than that in which it is warehoused in bond may be withdrawn under a transportation entry and shipped in bond to the other port at which it is to be used, where it may be entered on Customs Form 7501 which shall show withdrawal of the salt for use in curing fish. Thereupon, and upon the filing of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, such salt may be used without being sent to a bonded warehouse or public store. In such a case the proof of use shall be filed at the latter port.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.82 [Reserved]

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the port director holding the bond referred to in § 10.80, that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the port director may cancel the charges against the bond. The port director may require additional evidence in corroboration of the proof of use produced.

(b) On application of the person making the withdrawal, the period of the bond may be extended 1 year so as to allow the salt to be used during the time of extension in curing fish with the same privileges as if used during the original period.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987]

AUTOMOTIVE PRODUCTS

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a)(1) Certain motor vehicles and motor vehicle equipment are eligible for duty-free entry as proclaimed by the President under the Automotive Products Trade Act of 1965. The articles designated for such duty-free treatment are defined in General Note 3(c)(iii), HTSUS (19 U.S.C. 1202). Specifically, such articles are those designated [as ''Free (B)''] in the ''Special'' subcolumn in Chapter 87, HTSUS, and must qualify as ''Canadian articles'' as defined in General Note 3(c)(iii)(A)(1), HTSUS. To claim exemption from duty under the Automotive Products Trade Act of 1965, an importer must establish, to the satisfaction of the appropriate Customs officer, that the article in question qualifies as a ''Canadian article'' for purposes of General Note 3(c)(iii)A)(1), HTSUS. The Customs officer may accept as satisfactory evidence a certificate executed by the exporter as set forth in paragraph (b) of this section, subject to any verification he may deem necessary. Alternatively, the Customs officer may determine that under the circumstances of the importation a certificate is unnecessary.

(2) Under the United States-Canada Free-Trade Agreement and implementing legislation (Pub. L. 100–449, 102 Stat. 1851) a manufacturer of motor vehicles may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles in establishing its eligibility for tariff preference. Requirements for averaging are set forth in § 10.310 and 10.311.

(b)(1) When all materials used at any stage in the production of the imported article are wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is a ''Canadian article'':

All materials contained in the product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or

appended to this certificate of Canadian origin at the time it was subscribed were wholly obtained or produced in Canada or the United States, or both. No materials other than those which were wholly obtained or produced in Canada or the United States, or both, were incorporated into this product or any of its components at any stage of production or in the production of any intermediate product used at any stage in the chain of production in Canada or the United States, or both.

(2) When any material used at any stage in the production of an imported article or any of its components is not wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a ''Canadian article'':

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were used in its production in Canada _____ (Description sufficient for tariff classification of the materials, and number of units) of third country materials of which the price paid was _____ per unit of quantity, plus _____ which represents all costs incurred in transporting the materials to the location of the producer and the duties, taxes, and brokerage fees on the materials, if such costs were not included in the price paid.

(3) If such Customs officer is satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in paragraph (b)(2) of this section a certificate in the following form when the merchandise covered thereby has been produced with third country material but is an originating good under a specific rule of origin for the merchandise:

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were or may have been used in its production in Canada or the United States, or both, materials of a third country.

It is impractical to ascertain the exact number of units of third country material, if any, used in its production or the price paid (and other costs required to be included in the price paid) of such materials but to the best of (my) (our) (its) knowledge the materials are described (sufficient for tariff classification purposes) as follows: _____.

(4) The certificates described in paragraphs (b)(2) and (b)(3) of this section shall not be accepted if the statements therein make it evident that the importation is not a ''Canadian article'' within the meaning of General Note 3(c), HTSUS.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b) (1), (2), or (3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material, other than originating material, is used in the production of an article covered by such a certificate, the certificate shall state the number of units, a description sufficient for tariff classification purposes, the price paid, and, if not included in the price paid, the costs incurred in transporting the materials to the location of the producer and duties, taxes and brokerage fees paid in Canada and/or the United States on the material, per unit of each kind of materials.

(6) A certificate conforming to paragraph (b) (1), (2), or (3) of this section shall be accepted as evidence of the facts alleged therein only if:

(i) There is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary evidence which identifies the article to which the certificate pertains,

(ii) The certificate is signed by the manufacturer or producer of the article to which it pertains, or by the person who exported the articles from Canada, and

(iii) It clearly appears that such copy or other documentary evidence was annexed to the certificate when it was signed.

(c) In lieu of the certification in paragraph (b) (1), (2), or (3) of this section, a manufacturer of motor vehicles who claims a preference under the United States-Canada Free-Trade Agreement and elects to average pursuant to § 10.310(a), shall be subject to the requirements of §§ 10.301 to 10.311 of this part.

(d) When an importer makes an entry, or withdrawal from warehouse, for consumption of articles for use as

''original motor-vehicle equipment'' as that term is defined in General Note 3(c)(iii), HTSUS, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds of motor vehicles specified in the General Note and furnish the name and address of the motor vehicle manufacturer. A copy of the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the port director is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by customs officials upon request during a period of 3 years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(e) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, it is decided to divert the article from its intended use in the manufacture in the United States of motor vehicles, the importer or other person deciding to divert the article from such intended use shall give notice in writing of the decision to the director of the port where entry was made or where the offices of the importer are located and either make arrangements for its destruction or exportation under Customs supervision or pay duties in accordance with General Note 3(c)(iii)(B)(2), HTSUS. If such article is not destroyed or exported under Customs supervision or the duties paid, the article, or its value, shall be subject to forfeiture.

[T.D. 89–3, 53 FR 51765, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2453, Jan. 22, 1992; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

MASTER RECORDS, AND METAL MATRICES

§ 10.90 Master records and metal matrices.

(a) Consumption entries covering importations under subheading 8524.99.20, HTSUS, shall be filed at a port in the Customs district in which the factory where the articles will be used is located.

(b) The invoice filed with the entry shall contain or be supported by a detailed statement of the cost of production, in the country where made, of each master record or metal matrix covered thereby.

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed for importations under this section.

(d) Entries already filed and future entries shall be liquidated in due course without the assessment of duty, but liability on bonds given with the entries shall be discontinued with respect to any article covered thereby only upon payment of liquidated damages in an amount equal to the duties which would have accrued had the master records or metal matrices been imported for use otherwise than in the manufacture of sound records for export purposes, or upon satisfactory proof that the master records or metal matrices obtained therefrom have been exported or destroyed under Customs supervision, and that all sound records made with the use of such articles have been exported.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

PROTOTYPES

§ 10.91 Prototypes used exclusively for product development and testing.

(a) *Duty-free entry; declaration of use; extension of liquidation*—(1) *Entry or withdrawal for consumption.* Articles defined as ''prototypes'' and meeting the other requirements prescribed in paragraph (b) of this section may be entered or withdrawn from warehouse for consumption, duty-free, under subheading 9817.85.01, Harmonized Tariff Schedule of the United States (HTSUS), on CBP Form 7501 or an electronic equivalent. A separate entry or withdrawal must be made for a qualifying prototype article each time the article is imported/reimported to the United States.

(2) *Importer declaration.* (i) *Entry accepted as declaration.* Entry or withdrawal from warehouse for consumption under HTSUS subheading 9817.85.01

may be accepted by the port director as an effective declaration that the articles will be used solely for the purposes stated in the subheading.

(ii) *Proof (declaration) of actual use.* If it is believed the circumstances so warrant, the port director may request the submission of proof of actual use, executed and dated by the importer. The title of the party executing the proof of actual use must be set forth. If proof of actual use is requested, the importer must provide it within three years after the date the article is entered or withdrawn from warehouse for consumption. Liquidation of the related entry may be extended until the requested proof or declaration of actual use is received or until the three-year period from the date of entry allowed for the receipt of such proof has expired. While requested proof of use must be given to CBP within three years of the date of entry, the prototype may continue to be used thereafter for the purposes enumerated in HTSUS subheading 9817.85.01. If requested proof of use is not timely received, the entry will be liquidated as dutiable under the tariff provision that would otherwise apply to the imported article. While there is no particular form for this declaration, it may either be submitted in writing, or electronically as authorized by CBP, and must include the following:

(A) A description of the use that is being and/or that has been made of the articles set forth in sufficient detail so as to enable the port director to determine whether the articles have been entitled to entry as claimed;

(B) A statement that the articles have not and are not to be put to any other use after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use under HTSUS 9817.85.01 (also see paragraphs (c) and (d) of this section concerning the disposition(s) to which the articles may be put following their use under HTSUS subheading 9817.85.01); and

(C) A statement that the articles or any parts of the articles have not been and are not intended to be sold, or incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01 (*see* paragraph (b)(2)(ii) of this section).

(b) *Articles classifiable as prototypes*—(1) *Prototypes defined.* In accordance with U.S. Note 6(a) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the term ''prototypes'' means originals or models of articles pertaining to any industry that:

(i) Are either in the preproduction, production or postproduction stage and are to be used exclusively for development, testing, product evaluation, or quality control purposes (not including automobile racing for purse, prize or commercial competition); and

(ii) In the case of originals or models of articles that are either in the production or postproduction stage, are associated with a design change from current production (including a refinement, advancement, improvement, development or quality control in either the product itself or the means of producing the product).

(2) *Additional requirements.* In accordance with U.S. Note 6(b) and (c) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the following additional restrictions apply to articles that may be classified as prototypes:

(i) *Importations limited.* Prototypes may be imported pursuant to this section only in limited noncommercial quantities in accordance with industry practice.

(ii) *Sale prohibited after entry and prior to use.* Prototypes or parts of prototypes may not be sold, or be incorporated into other products that are sold into the commerce of the United States, after the prototypes have been entered or withdrawn from warehouse for consumption under HTSUS subheading 9817.85.01, except that, after having been used for the purposes for which they were entered or withdrawn from warehouse under HTSUS subheading 9817.85.01, such prototypes or any part(s) of the prototypes may be sold as scrap, waste, or for recycling, as prescribed in paragraph (c) of this section.

(iii) *Articles subject to laws of another agency.* Articles that are subject to licensing requirements, or that must

comply with laws, rules or regulations administered by an agency other than CBP before being imported, may be entered as prototypes pursuant to this section if they meet all applicable provisions of law and otherwise meet the definition of prototypes in paragraph (b)(1) of this section.

(iv) *Articles excluded from being prototypes.* Articles that are in fact subject at the time of entry to quantitative restrictions, antidumping orders or countervailing duty orders are excluded from being classified as prototypes under this section.

(c) *Sale of prototype following use*—(1) *Sale.* Prototypes or any part(s) of prototypes, after having been used for the purposes for which they were entered or withdrawn under HTSUS subheading 9817.85.01, may only be sold as scrap, waste, or for recycling. This includes a prototype or any part thereof that is incorporated into another product, as scrap, waste, or recycled material. If sold as scrap, waste, or for recycling, applicable duty must be paid on the prototypes or parts as provided in paragraph (c)(3) of this section, at the rate of duty in effect for such scrap, waste, or recycled materials at the time the prototypes were entered or withdrawn for consumption.

(2) *Notice of sale required.* If, after a prototype has been used for the purposes contemplated in HTSUS subheading 9817.85.01, the prototype or any part(s) of the prototype (including a prototype or any part that is incorporated into another product) is sold as scrap, waste, or for recycling, the importer must provide notice of such sale to the port director where the entry or withdrawal of the prototype was made. A notice, in the manner authorized in paragraph (c)(3) of this section, must be submitted in connection with the sale, whether or not duty is payable. The notice should not be submitted prior to the submission of proof of actual use, should such proof of actual use be requested by the port director (*see* paragraph (a)(2)(ii) of this section).

(3) *Form and content of notice; tender of duty.* While no particular form is required for the notice of sale, a consumption entry (CBP Form 7501), appropriately modified, or an electronic equivalent as authorized by CBP, may be used for this purpose. The notice may be a blanket notice covering all those sales described in paragraph (c)(2) of this section that occur over a quarterly (3-month) calendar period. Such notice must be filed within 10 business days of the end of the related quarterly period in which the sale(s) occurred. If an article sold is dutiable, the payment of any duty due must be forwarded together with the notice (*see* paragraph (c)(1) of this section). If the notice is filed electronically, payment of any duty owed will be handled through the Automated Clearinghouse (*see* § 24.25 of this chapter). The notice of sale must be executed by the importer, or other person having knowledge of the facts surrounding the sale, and must include the following:

(i) The identity of the prototype; the consumption entry number under which it was imported; a copy of the declaration of actual use, if proof of actual use was requested under paragraph (a)(2)(ii) of this section; and a detailed description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use and/or otherwise resulting to the article from any other cause prior to its sale for scrap, waste, or recycling;

(ii) The name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article;

(iii) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption;

(iv) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section); and

(v) The title of the party executing the declaration and the date of execution.

(d) *Prototypes not sold following use.* As to those prototypes or parts of prototypes that, after having been used as prescribed under HTSUS subheading 9817.85.01, are disposed of otherwise than by sale (*see* paragraph (c)(1) of this section), there is no requirement

that the importer notify CBP of any such alternative disposition. Nor are there any dutiable consequences that ensue from any disposition of the merchandise after the merchandise's use under HTSUS subheading 9817.85.01 other than sale to the extent authorized under paragraph (c)(1) of this section.

(e) *Recordkeeping; retention and production*—(1) *Recordkeeping.* The importer must be prepared to submit to the CBP officer, if requested, any information, including any supporting documents, reports and records, as was necessary for the preparation of the declaration of use, if the declaration of use was requested under paragraph (a)(2)(ii) of this section, and the notice of sale, if applicable under paragraph (c)(3) of this section. The notices, together with any related supporting evidence, may be subject to such verification as the port director reasonably deems necessary. Supporting documentary evidence must be made available to the CBP officer, upon request, for a period of five years (*see* §163.4(a) of this chapter) from the date of filing in complete and proper form, the declaration of use, if requested, and, if applicable, the notice of sale. The supporting records must be made available to the CBP officer upon request in accordance with §163.6 of this chapter.

(i) Documents supporting the proof (declaration) of actual use must:

(A) Establish that the identity and description of the prototype article is the same article that the consumption entry was made for under subheading 9817.85.01, HTSUS; and

(B) Describe the circumstances of the use of the article; the operations, testing, review, manipulation, experimentation, and/or other exercises that are being and/or that have been conducted in connection with the prototype; and the location, such as the plant or production facility, where these activities occurred, sufficient to demonstrate that the purposes enumerated in HTSUS subheading 9817.85.01 are taking and/or have actually taken place.

(ii) Documents supporting the notice of sale must establish that:

(A) The identity of the prototype sold is the same article for which a consumption entry was made under subheading 9817.85.01 HTSUS when it was imported, and that the article was in the condition described in the notice of sale;

(B) The article was sold to the party identified in the notice of sale;

(C) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype is accurate;

(D) The date that the prototype was originally imported for consumption, and the corresponding rate of duty in effect at the time for the applicable HTSUS subheading; and

(E) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section) as claimed in the notice of sale is accurate.

(2) *Relevant value for used prototype or parts sold.* For purposes of this section, with respect to any duty owed on prototypes or parts of prototypes that are sold as scrap, or waste, or for recycling, where the duty owed is based upon value, the relevant value is the market value of the prototypes or parts, based upon their character and condition following use for the purposes prescribed in HTSUS subheading 9817.85.01. The relevant value should take into consideration any damage, degradation or deterioration to the prototypes or parts resulting from their use as a prototype and/or otherwise resulting to the articles from any other cause prior to their sale as scrap, waste, or for recycling. The market value will generally be measured by the selling price. Should a prototype or part of a prototype become a component of another product that is sold as scrap, waste, or recycled material, the relevant market value would be that portion of the selling price attributable to the component (prototype or part) as provided in this paragraph.

(f) *Articles admitted under TIB*—(1) *Duty-free entry available.* Under the procedure presented in paragraph (f)(2) of this section, an entry of an article made under a temporary importation bond (TIB) solely for testing, experimental or review purposes under HTSUS subheading 9813.00.30 may be converted into a duty-free entry under

HTSUS subheading 9817.85.01, if the following conditions exist:

(i) The article meets the definition for ''prototypes'' in paragraph (b) of this section (U.S. Note 6(a) to subchapter XVII, chapter 98, HTSUS); and

(ii) The TIB entry for the article was in effect and had not been closed, and the TIB period for the article had not expired, as of November 9, 2000.

(2) *Procedure for converting TIB entry to duty-free entry*—(i) *Importer request.* The importer must submit a written request, or an electronic equivalent as authorized by CBP, that a TIB entry made under HTSUS subheading 9813.00.30, which was in effect and had not been closed, and for which the TIB period had not expired, as of November 9, 2000, be converted instead into a duty-free consumption entry under HTSUS subheading 9817.85.01.

(ii) *Action by CBP.* CBP will convert the TIB entry under HTSUS subheading 9813.00.30 to a duty-free entry under HTSUS subheading 9817.85.01, provided that the port director is satisfied that the conditions set forth in paragraphs (f)(1)(i) and (f)(1)(ii) of this section have been met. When the TIB entry is converted, the bond will be cancelled and the entry closed. Once the conversion is complete, the port director will provide a courtesy acknowledgment to this effect to the importer in writing or electronically.

[CBP Dec. 04–36, 69 FR 63449, Nov. 2, 2004]

§§ 10.92–10.97 [Reserved]

FLUXING MATERIAL

§ 10.98 Copper-bearing fluxing material.

(a) For the purpose of this section, ores usable as a flux or sulphur reagent, mentioned in the provision for such ores in subheading 2603.00.00, Harmonized Tariff Schedule of the United States, shall include only ores which contain by weight not over 15 percent copper.

(b) [Reserved]

(c) There shall be filed in connection with the entry of such copper-bearing ores, either for consumption or warehouse, a declaration of the importer that the material is to be used for fluxing purposes only. In the case of a consumption entry, the estimated tax shall be deposited at the time of entry. Liquidation of entries shall be suspended pending proof of use for fluxing purposes as hereinafter provided.

(d) Samples of the material shall be taken in accordance with the commercial method in effect at the plant if to be used in a bonded smelting warehouse, or in accordance with §§ 151.52 through 151.55 of this chapter if entered for consumption, and the copper content thereof shall be determined by the Government chemist in accordance with the assay.

(e) The management of the smelting or converting plant shall file with the appropriate Customs officer at the port or ports where the entries are to be liquidated, a statement based on its records of operation for each quarterly period showing for each furnace or converter the total quantity of material charged during each month or part thereof of each quarter, the total quantity of material used for fluxing purposes, and the quantity of imported ores used for fluxing purposes for which free entry was claimed under the above-mentioned provision, together with the copper content of such imported ores computed in accordance with the Government assay. If the quantity of ores used for fluxing purposes in any furnace or converter during any month or part thereof of any quarter is in excess of 25 percent of the charge of such furnace or converter, the quarterly statement shall be accompanied by an explanation of the necessity for using such quantity for fluxing purposes.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51251, Dec. 21, 1988]

ETHYL ALCOHOL

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.

(a) If claim is made by an importer other than the United States or a governmental agency thereof for the classification of ethyl alcohol of an alcoholic strength by volume of 80 percent volume or higher under subheading 2207.10.60, Harmonized Tariff Schedules of the United States, the importer or

his agent shall file in connection with the entry a declaration that the alcohol is to be used for nonbeverage purposes only and whether the alcohol is to be used for fuel purposes. Customs shall release the alcohol for transfer, under internal revenue bond, to a distilled spirits plant upon deposit of estimated duty, if any, and without the payment of the internal revenue tax upon receipt of a transfer record for bulk spirits. In addition, a package gauge record must be submitted to Customs if the alcohol is in packages, as specified in subpart I of part 251, Bureau of Alcohol, Tobacco and Firearms (BATF) Regulations (27 CFR part 251, subpart I). The transfer shall be accomplished in accordance with subpart L of part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 251, subpart L).

(b) An appropriate BATF permit shall be filed with Customs in connection with the withdrawal of ethyl alcohol from Customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes. Such permit shall be filed before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of §141.102(d) of this chapter. (See subpart M of part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 251, subpart M)).

(c) The procedures for the withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands are found in subpart O of part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 250, subpart O).

[T.D. 89–65, 54 FR 28413, July 6, 1989]

UNITED STATES GOVERNMENT IMPORTATIONS

§ 10.100 Entry, examination, and tariff status.

Except as otherwise provided for in §§10.101, 10.102, 10.104, 141.83(d)(8), 141.102(d), or elsewhere in this chapter, importations made by or for the account of any agency or office of the United States Government are subject to the usual Customs entry and examination requirements. In the absence of express exemptions from duty, such as are contained in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) providing for free entry, such importations are also subject to duty.

[T.D. 77–23, 42 FR 2310, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.101 Immediate delivery.

(a) *Shipments entitled to immediate delivery.* Shipments consigned to or for the account of any agency or office of the United States Government, or to an officer or official of any such agency in his official capacity, shall be regarded for purposes of these regulations as shipments the immediate delivery of which is necessary within the purview of section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

(b) *Immediate delivery applications.* The shipments described in the preceding paragraph may be released upon the filing of immediate delivery applications on Customs Form 3461 as set forth in subpart A of part 142 of this chapter. Such applications may be limited to particular shipments or may cover all shipments imported by the Government agency making the application. They may be approved for specific periods of time or for indefinite periods of time, provided in either case they are supported by carrier's certificates and stipulations as provided for in paragraph (c) of this section.

(c) *Carrier's certificates and stipulations.* Before the release of a shipment under an immediate delivery permit, evidence of the right of the applicant to make entry for the articles shall be furnished the port director in accordance with the provisions of §§141.11 and 141.12 of this chapter.

(d) *Bond.* No bond shall be required in support of an immediate delivery application provided for in this section if a stipulation in the form as set forth below is filed with the port director in connection with the application:

I, _____, _____ (Title), a duly authorized representative of the _____

(Name of United States Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and all other laws and regulations, relating to the release and entry of merchandise will be observed and complied with in all respects.

(Signature)

(e) *Timely entries required.* If proper entries for consumption for importations released under these regulations are not filed within a reasonable time, appropriate steps shall be taken to insure the prompt filing of such entries.

[T.D. 77–23, 42 FR 2310, Jan. 11, 1977, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987]

§ 10.102 Duty-free entries.

(a) *Invoice or declaration.* No invoice or other declaration of the shipper shall be required for shipments expressly exempt from duty as provided in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) providing for free entry. However, the importing Government agency or office shall present any invoice, memorandum invoice, or bill pertaining to the merchandise in its possession or available to it, or, if no such invoice or bill is available, a pro forma invoice prepared in accordance with § 141.85 of this chapter, setting forth adequate information for examination and determination of the dutiable status of the merchandise. In addition, the port director shall only admit articles free of duty under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), upon the receipt of a certificate executed in the manner and form described in paragraph (b) of this section.

(b) *Certification.* One of the following certificates executed by a duly authorized officer or official of the appropriate Government agency or office is required for free entry of articles under subheadings 9808.00.30, 9808.00.40, or 9808.00.50, HTSUS (19 U.S.C. 1202). The certificates may be printed, stamped, or typewritten on the Customs entry or withdrawal form, Customs Form 7501, or on a separate paper attached to the entry or withdrawal form filed by the Government agency or office, provided the certification is clearly and unmistakably identified with the articles covered by the entry or withdrawal.

(1) *Articles for military departments, subheading 9808.00.30, HTSUS.* I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (name of military department), and it is accordingly requested that such material be admitted free of duty pursuant to subheading 9808.00.30, HTSUS.

(Name)

(Title), who has been designated to execute free-entry certificates for the above-named department.

(Grade or Rank) (Organization)

(2) *Articles for the Defense Logistics Agency, subheading 9808.00.40, HTSUS.* Pursuant to subheading 9808.00.40, HTSUS, I hereby certify that the above-described materials are strategic and critical materials procured under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e).

(Name)

(Title), Defense Logistics Agency, who has been duly authorized to execute the above certificate.

(3) *Articles for the Department of Energy, subheading 9808.00.50, HTSUS.* I certify to the Secretary of the Treasury that the above-described materials are source materials purchased abroad, the admittance of which is necessary in the interest of the common defense and security, in accordance with subheading 9808.00.50, HTSUS.

(Name)

(Title), who has been authorized to execute free-entry certificates for the Department of Energy.

(c) *Release of shipments.* Shipments for which free entry has been or will be claimed under subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), shall be released after only such examination as is necessary to identify them.

(d) *Entry in Government name.* All materials for which free entry is claimed under subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), shall be entered, or withdrawn from warehouse, for consumption in the name of the Government department whose representative executes the certificate set forth in §10.102(b) unless exemption from this requirement is specifically authorized by the port director.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 85–123, 50 FR 29953, July 23, 1985; T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 93–44, 58 FR 34523, June 28, 1993; T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.103 American goods returned.

(a) *Certificate required.* Articles entered, or withdrawn from warehouse, for consumption in the name of an agency or office of the United States Government (with the exception of military scrap belonging to the Department of Defense) may be admitted free of duty under subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), upon the filing of a certificate on the letterhead of the agency or office in the following form in lieu of other entry documentation:

I hereby certify:

1. That the following articles imported in the _____ (Name of Carrier) at the port of _____ (Port) on _____ (Date) consist of returned products which are the growth, produce, or manufacture of the United States, and have been returned to the United States without having been advanced in value or improved in condition by any process of manufacture or other means, and that no drawback has been or will be claimed on such articles, and that the articles currently belonging to and are for the further use of _____ (Agency or Office)

Number of containers	Bill of lading No. [1]	General description of articles

[1] If shipment arrives in the United States on a commercial carrier.

2. That the shipment does not contain military scrap.

3. That the shipment is entitled to entry under subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS) free of duty.

4. That I am a military installation transportation officer having knowledge of the facts involved in this certificate.

or

I am an officer or official authorized by _____ (Agency or Office) (Whichever is applicable) to execute this certificate.

_____
(Name)

_____
(Rank and branch of service or Agency or Office)

(b) *Combined certificate when articles are intermingled.* When articles claimed to be free under subheading 9801.00.10 and other articles claimed to be free under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), are intermingled in a single shipment in a manner which precludes separation for the purpose of making claims for free entry under the separate categories, all the articles may be covered by a combined certificate which follows the requirements of §10.102(b) and paragraph (a) of this section.

(c) *Execution of certificate.* The certificate required by paragraph (a) of this section may be executed by any military installation transportation officer having knowledge of the facts or by any other officer or official specifically designated or authorized to execute such certificates by the importing Government agency or office. If the merchandise arrived on a commercial carrier, the entry shall be supported by evidence of the right to make it.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988]

§ 10.104 Temporary importation entries for United States Government agencies.

The entry of articles brought into the United States temporarily by an agency or office of the United States Government and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Heading 9813, Harmonized Tariff Schedule of the United States (HTSUS), shall be made on Customs Form 7501. No bond shall be required if the agency or office files a stipulation in the form set forth in §141.102(d) of this chapter. In those cases in which the provisions of Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202),

are not met, however, the port director will proceed as if a bond had been filed to cover the particular importation. Articles temporarily imported by a Government agency or office under this section are entitled to immediate delivery under the procedures set forth in § 10.101.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988]

WHEAT

§ 10.106 [Reserved]

RESCUE AND RELIEF WORK

§ 10.107 Equipment and supplies; admission.

(a) There shall be admitted without entry and without the payment of duty or any tax imposed upon or by reason of importation of any article described in section 322(b), Tariff Act of 1930, as amended, subject to compliance with the following conditions:

(1) Before importation or as soon thereafter as possible, and in every case before the expiration of 10 days after importation, a report shall be made to the nearest Customs officer by the person in charge of sending the article from the foreign country, or by the person for whose account it was brought into the United States, stating the character, quantity, destination, and use to be made of the article.

(2) If practicable, the article shall be exported under Customs supervision. In any other case a report shall be made by the person in charge of the exportation as soon as possible after exportation to the Customs officer to whom the arrival was reported, stating the character, quantity, and circumstances of the exportation.

(b) In the case of each article admitted under paragraph (a) of this section, the port director shall satisfy himself as to whether the article was exported within a reasonable time, or that it has been properly expended or destroyed. If an article is so far destroyed, in connection with a use contemplated for it by section 322 (b) that it has only a salvage value, it shall not be required to be exported.

(c) Any article admitted under paragraph (a) of this section which is used in the United States otherwise than for a purpose contemplated for it by section 322(b), or which is not exported within 90 days after its arrival in the United States, or within such longer time as may be specially authorized by the port director or Headquarters, U.S. Customs Service, shall be seized and forfeited to the United States.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

PRODUCTS EXPORTED UNDER LEASE AND REIMPORTED

§ 10.108 Entry of reimported articles exported under lease.

Free entry shall be accorded under subheading 9801.00.20, Harmonized Tariff Schedule of the United States (HTSUS), whenever it is established to the satisfaction of the port director that the article for which free entry is claimed was duty paid on a previous importation or was previously entered free of duty pursuant to the Caribbean Basin Economic Recovery Act or Title V of the Trade Act of 1974, is being reimported without having been advanced in value or improved in condition by any process of manufacture or other means, was exported from the United States under a lease or similar use agreement, and is being reimported by or for the account of the person who imported it into, and exported it from, the United States.

[T.D. 94–40, 59 FR 17474, Apr. 13, 1994]

STRATEGIC MATERIALS OBTAINED BY BARTER OR EXCHANGE

§ 10.110 [Reserved]

LATE FILING OF FREE ENTRY AND REDUCED DUTY DOCUMENTS

§ 10.112 Filing free entry documents or reduced duty documents after entry.

Whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be

filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. See § 113.43(c) of this chapter for satisfaction of the bond and cancellation of the bond charge.

[T.D. 74–227, 39 FR 32015, Sept. 4, 1974]

INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

§ 10.114 General provisions.

The consolidated regulations of the Commerce and Treasury Departments relating to the entry of instruments and apparatus for educational and scientific institutions are contained in 15 CFR part 301.

[T.D. 82–224, 47 FR 53727, Nov. 29, 1982]

§§ 10.115–10.119 [Reserved]

VISUAL OR AUDITORY MATERIALS

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), are claimed to be free of duty under subheading 9817.00.40, HTSUS, there must be filed, in connection with the entry covering such articles, a document issued by the U.S. Department of State certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by U.S. note 1(a)(i), Subchapter XVII, chapter 98, HTSUS.

(b) Articles entered under subheading 9817.00.40, HTSUS, will be released from CBP custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry which has been released under this procedure will be suspended for a period of 314 days from the date of entry or until the required document is submitted, whichever comes first. In the event that documentation is not submitted before liquidation, the merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

[CBP Dec. 10–33, 75 FR 69585, Nov. 15, 2010; CBP Dec. 12–02, 77 FR 10369, Feb. 22, 2012]

RATE OF DUTY DEPENDENT UPON ACTUAL USE

§ 10.131 Circumstances in which applicable.

The provisions of §§ 10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in section 10.58, may be applicable to merchandise subject to the provisions of sections 10.131–10.139.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 86–118, 51 FR 22515, June 20, 1986]

§ 10.132 [Reserved]

§ 10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the United States applicable to the merchandise specifies other conditions. The conditions are that:

(a) Such use is intended at the time of importation.

(b) The article is so used.

(c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

§ 10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended

use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the United States (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the port director is satisfied the merchandise will be so used. However, the port director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the HTSUS.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

§ 10.135 Deposit of duties.

When the requirement of § 10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984]

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to § 10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

[T.D. 71–139, 36 FR 10726, June 2, 1971]

§ 10.137 Records of use.

(a) *Maintenance by importer*. The importer shall maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) *Retention of records*. The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) *Examination of records*. The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

[T.D. 71–139, 36 FR 10726, June 2, 1971]

§ 10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

[T.D. 71–139, 36 FR 10727, June 2, 1971]

§ 10.139 Liquidation.

(a) *In general*. Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate subheading of the Harmonized Tariff Schedule of the United States.

(b) *Exception for blackstrap molasses*. An entry covering blackstrap molasses, as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration of intent required by § 10.134 and the deposit of estimated duties required by

§ 10.135 without compliance with §§ 10.136, 10.137, and 10.138. Blackstrap molasses is ''final'' molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

total sugars × 100/Brix

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than 7 percent indicates a blackstrap molasses within the meaning of this paragraph.

[T.D. 71–139, 36 FR 10727, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

IMPORTATIONS NOT OVER $200 AND BONA FIDE GIFTS

§ 10.151 Importations not over $200.

Subject to the conditions in § 10.153 of this part, the port director shall pass free of duty and tax any shipment of merchandise, as defined in § 101.1 of this chapter, imported by one person on one day having a fair retail value, as evidenced by an oral declaration or the bill of lading (or other document filed as the entry) or manifest listing each bill of lading, in the country of shipment not exceeding $200, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. Merchandise subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 128.24, 145.31, 148.12, and 148.62, of this chapter).

[T.D. 94–51, 59 FR 30293, June 13, 1994, as amended by T.D. 95–31, 60 FR 18990, Apr. 14, 1995; T.D. 95–31, 60 FR 37875, July 24, 1995; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.152 Bona-fide gifts.

Subject to the conditions in § 10.153 of this part, the port director shall pass free of duty and tax any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided that the aggregate fair retail value in the country of shipment of such articles received by one person on one day does not exceed $100 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $200. Articles subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 145.32, 148.12, 148.51, and 148.64, of this chapter). An article is ''sent'' for purposes of this section if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

[T.D. 94–51, 59 FR 30293, June 13, 1994]

§ 10.153 Conditions for exemption.

Customs officers shall be further guided as follows in determining whether an article or parcel shall be exempted from duty and tax under § 10.151 or § 10.152:

(a) A ''bona fide gift'' for purposes of § 10.152 is an article formerly owned by a donor (may be a commercial firm) who gave it outright in its entirety to a donee without compensation or promise of compensation. It does not include articles acquired by purchase, barter, promissory exchange, or similar transaction, nor does it include articles said to be ''given'' in conjunction with a purchase, barter, promissory exchange, or similar transaction, such as a so-called bonus article.

(b) A parcel addressed to a person in the United States from an individual in a foreign country which contains a gift should be clearly marked on the outside to indicate that it contains a gift. Such marking is not conclusive evidence of a gift nor is the absence of such marking conclusive evidence that an article is not a gift. Ordinarily an article not exceeding $100 in fair retail value in the country of shipment sent from a person in a foreign country to a person in the United States ($200, in the case of an article sent from a person in the Virgin Islands, Guam, and American Samoa) will be recognizable as a gift from the nature of the article and obvious facts surrounding the shipment.

(c) A parcel addressed to a person in the United States from a business firm in a foreign country would ordinarily not contain a gift from a donor in the foreign country. When such a parcel in fact contains an article entitled to free

entry under § 10.152, the parcel should be clearly marked to indicate that it contains such a gift and a statement to this effect should be enclosed in the parcel.

(d) Consolidated shipments addressed to one consignee shall be treated for purposes of §§ 10.151 and 10.152 as one importation. The foregoing shall not apply to shipments of bona fide gifts consolidated abroad for shipment to the United States when:

(1) The consolidation for shipment to the United States is in a cargo van or similar containerization which is consigned to a common carrier, freight forwarder, freight handler, or other public service agency for distribution of the gift packages;

(2) The separate gifts not exceeding $100 in fair retail value in the country of shipment ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa) included in the consolidated shipment are before shipment individually wrapped and addressed to the donee in the United States;

(3) Each gift package is marked on the outside to indicate that it contains a gift not exceeding $100 in fair retail value in the country of shipment ($200, in the case of packages sent from persons in the Virgin Islands, Guam, and American Samoa); and

(4) Each gift package is separately listed in the name of the addressee-donee on a packing list, manifest, bill of lading, or other shipping document.

(e) No alcoholic beverage, perfume containing alcohol (except where the aggregate fair retail value in the country of shipment of all merchandise contained in the shipment does not exceed $5), cigars, or cigarettes shall be exempted from the payment of duty and tax under § 10.151 or § 10.152.

(f) The exemptions provided for in § 10.151 or § 10.152 are not to be allowed in respect of any shipment containing one or more gifts having an aggregate fair retail value in the country of shipment in excess of $100 ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), except as indicated in paragraph (d) of this section. For example, an article ordinarily subject to an ad valorem rate of duty but sent as a gift, if the fair retail value exceeds the $100 (or $200) exemption, would be subject to a duty based upon its value under the provisions of section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), even though the dutiable value is less than the $100 (or $200) exemption.

(g) The exemption referred to in § 10.151 is not to be allowed in the case of any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed. In the case of merchandise of a class or kind provided for in a tariff-rate quota, the merchandise is subject to the rate of duty in effect on the date of entry.

[T.D. 73–175, 38 FR 17445, July 2, 1973, as amended by T.D. 75–185, 40 FR 31753, July 29, 1975; T.D. 78–394, 43 FR 49787, Oct. 25, 1978; T.D. 85–123, 50 FR 29953, July 23, 1985; T.D. 94–51, 59 FR 30293, June 13, 1994]

GENERALIZED SYSTEM OF PREFERENCES

§ 10.171 General.

(a) *Statutory authority*. Title V of the Trade Act of 1974 as amended (19 U.S.C. 2461–2467) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary developing countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive order in accordance with sections 502(a)(1) and 503(a) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(1), 2463(a)).

(b) *Country defined*. For purposes of §§ 10.171 through 10.178, except as otherwise provided in § 10.176(a), the term ''country'' means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union or which is contributing to comprehensive regional economic integration among its members through appropriate means, including but not limited to, the reduction of duties, the President may by Executive order provide that all members of such association other than members which are

barred from designation under section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) shall be treated as one country for purposes of §§ 10.171 through 10.178.

[T.D. 76–2, 40 FR 60047, Dec. 31, 1975, as amended by T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.172 Claim for exemption from duty under the Generalized System of Preferences.

A claim for an exemption from duty on the ground that the Generalized System of Preferences applies shall be allowed by the port director only if he is satisfied that the requirements set forth in this section and §§ 10.173 through 10.178 have been met. If duty-free treatment is claimed at the time of entry, a written claim shall be filed on the entry document by placing the symbol ''A'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which such treatment is claimed.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77–36, 42 FR 5041, Jan. 27, 1977; T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 94–47, 59 FR 25569, May 17, 1994; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 10.173 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country.* (i) *Declaration.* In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter of the merchandise or other appropriate party having knowledge of the relevant facts shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the merchandise. When requested by the port director, the declaration shall be prepared in substantially the following form:

GSP DECLARATION

I, _____ (name), hereby declare that the articles described below were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director

may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary developing country.* In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary developing country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry.* Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the port director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any evidence of country of origin submitted under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable.

[T.D. 94–47, 59 FR 25569, May 17, 1994]

§ 10.174 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.175. Any evidence of direct shipment required by the port director shall be subject to such verification as he deems necessary.

(b) *Waiver of evidence of direct shipment.* The port director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77–27, 42 FR 3162, Jan. 17, 1977]

§ 10.175 Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of §§ 10.171 through 10.178 the words ''imported directly'' mean:

(a) Direct shipment from the beneficiary country to the United States without passing through the territory of any other country; or

(b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If shipped from the beneficiary developing country to the United States through a free trade zone in a beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and

(1) The eligible articles must not undergo any operation other than:

(i) Sorting, grading, or testing,

(ii) Packing, unpacking, changes of packing, decanting or repacking into other containers,

(iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or

(iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone.

(2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone.

(3) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone; or

(d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the

final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition; or

(e)(1) Shipment to the U.S. from a beneficiary developing country which is a member of an association of countries treated as one country under section 507(2), Trade Act of 1974, as amended (19 U.S.C. 2467(2)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d)), provided the articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export.

(2) The designation of the following countries as members of an association of countries for GSP purposes has been terminated by the President pursuant to section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d)):

The Bahamas
Brunei Darussalam
Malaysia
Singapore

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 83–144, 48 FR 29684, June 28, 1983; T.D. 84–237, 49 FR 47992, Dec. 7, 1984; T.D. 86–107, 51 FR 20816, June 9, 1986; T.D. 92–6, 57 FR 2018, Jan. 17, 1992; T.D. 94–47, 59 FR 25569, May 17, 1994; T.D. 95–30, 60 FR 18543, Apr. 12, 1995; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries*—(1) *General.* Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph. For purposes of this section:

(i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering, etc.;

(C) Blending foreign and beneficiary developing country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength;

(ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and

(iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

(b) [Reserved]

(c) *Merchandise grown, produced, or manufactured in a beneficiary developing country.* Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2)) and § 10.171(b), and manufactured products consisting of materials produced only in such country or countries, shall normally be presumed to meet the requirements set forth in this section.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.177 Cost or value of materials produced in the beneficiary developing country.

(a) *''Produced in the beneficiary developing country'' defined.* For purposes of §§ 10.171 through 10.178, the words ''produced in the beneficiary developing country'' refer to the constituent materials of which the eligible article is composed which are either:

(1) Wholly the growth, product, or manufacture of the beneficiary developing country; or

(2) Substantially transformed in the beneficiary developing country into a new and different article of commerce.

(b) *Questionable origin.* When the origin of an article either is not ascertainable or not satisfactorily demonstrated to the port director, the article shall not be considered to have been produced in the beneficiary developing country.

(c) *Determination of cost or value of materials produced in the beneficiary developing country.* (1) The cost or value of materials produced in the beneficiary developing country includes:

(i) The manufacturer's actual cost for the materials;

(ii) 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;

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

(iv) Taxes and/or duties imposed on the materials by the beneficiary developing country, or an association of countries treated as one country, provided they are not remitted upon exportation.

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

(i) All expenses incurred in the growth, production, manufacture or assembly of the material, including general expenses;

(ii) An amount for profit; and

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

If the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

[T.D. 76–2, 40 FR 60049, Dec. 31, 1975, as amended by T.D. 86–118, 51 FR 22515, June 20, 1986]

§ 10.178 Direct costs of processing operations performed in the beneficiary developing country.

(a) *Items included in the direct costs of processing operations.* As used in § 10.176, the words ''direct costs of processing operations'' means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to:

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

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

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

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words ''direct costs of processing operations'' are those which are not directly attributable to the merchandise under consideration or are not ''costs'' of manufacturing the product. These include, but are not limited to:

(1) Profit; and

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

[T.D. 76–2, 40 FR 60049, Dec. 31, 1975]

§ 10.178a Special duty-free treatment for sub-Saharan African countries.

(a) *General.* Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) *Eligible articles.* The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section:

(1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(2) Certain electronic articles;

(3) Certain steel articles;

(4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

(5) Certain semimanufactured and manufactured glass products; and

(6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

(c) *Claim for duty-free treatment.* A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol ''D'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) *Origin and related rules.* The provisions of §§10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules:

(1) The term ''beneficiary developing country,'' wherever it appears, means ''beneficiary sub-Saharan African country;'

(2) In the GSP declaration set forth in §10.173(a)(1)(i), the column heading ''Materials produced in a beneficiary developing country or members of the same association'' should read ''Material produced in a beneficiary sub-Saharan African country, a former beneficiary sub-Saharan African country, or the U.S.;''

(3) The provisions of §10.175(c) will not apply; and

(4) For purposes of determining compliance with the 35 percent value content requirement set forth in §10.176(a):

(i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of §10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country or former beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(5) As used in this paragraph, the term ''former beneficiary sub-Saharan African country'' means a country that, after being designated by the President as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a free trade agreement with the United States.

(e) *Importer requirements.* In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;

(2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in §10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in §10.173(a)(1) is one example of a record that would serve this purpose;

(3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section;

(4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-

Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.175(d)(1) through (3) were met;

(5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in § 10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose; and

(6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

[T.D. 00–67, 65 FR 59675, Oct. 5, 2000, as amended by CBP Dec. 14-07, 79 FR 30392, May 27, 2014]

CANADIAN CRUDE PETROLEUM

§ 10.179 Canadian crude petroleum subject to a commercial exchange agreement between United States and Canadian refiners.

(a) Crude petroleum (as defined in Chapter 27, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)) produced in Canada may be admitted free of duty if the entry is accompanied by a certificate from the importer establishing that:

(1) The petroleum is imported pursuant to a commercial exchange agreement between United States and Canadian refiners which has been approved by the Secretary of Energy;

(2) An equivalent amount of domestic or duty-paid foreign crude petroleum on which the importer has executed a written waiver of drawback, has been exported to Canada pursuant to the export license and previously has not been used to effect the duty-free entry of like Canadian products; and,

(3) An export license has been issued by the Secretary of Commerce for the petroleum which has been exported to Canada.

(b) The provisions of this section may be applied to:

(1) Liquidated or reliquidated entries if the required certification is filed with the director of the port where the original entry was made on or before the 180th day after the date of entry; and

(2) Articles entered, or withdrawn from warehouse, for consumption, pursuant to a commercial exchange agreement.

(c) Verification of the quantities of crude petroleum exported to or imported from Canada under such a commercial exchange agreement shall be made in accordance with import verification provided in Part 151, Subpart C, Customs Regulations (19 CFR part 151, subpart C).

[T.D. 81–292, 46 FR 58069, Nov. 30, 1981, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 91–82, 56 FR 49845, Oct. 2, 1991]

CERTAIN FRESH, CHILLED, OR FROZEN BEEF

§ 10.180 Certification.

(a) The foreign official's meat-inspection certificate required by U.S. Department of Agriculture regulations (9 CFR 327.4) shall be modified to include the certification below when fresh, chilled, or frozen beef is to be entered under the provisions of subheadings 0201.20.10, 0201.30.02, 0202.20.02, 0202.20.10, Harmonized Tariff Schedule of the United States (HTSUS). The certification shall be made, prior to exportation of the beef, by an official of the government of the exporting country and filed with Customs with the entry summary or with the entry when the entry summary is filed at the time of entry. The requirements of this section

shall be in addition to those requirements contained in 9 CFR 327.4. Appropriate officials of the exporting country should consult with the U.S. Department of Agriculture as to the beef grades or standards within their country that satisfy the certification requirement. Exporters or importers of beef to be entered under the provisions of subheadings 0201.20.10, 0201.30.02, 0202.20.02, 0202.20.10, HTSUS, should consult with the U.S. Department of Agriculture prior to exportation in order to insure that the beef will satisfy the certification requirements. This certification is relevant only to U.S. Customs tariff classification and is not applicable to marketing of beef under U.S. Department of Agriculture grading standards, a matter within U.S. Department of Agriculture's jurisdiction.

CERTIFICATION

I hereby certify to the best of my knowledge and belief that the herein described fresh, chilled, or frozen beef, meets the specifications prescribed in regulations issued by the U.S. Department of Agriculture (7 CFR 2853.106 (a) and (b)).

(b) Appropriate officials of the following countries have agreed with the U.S. Department of Agriculture as to the grades or standards for fresh, chilled, or frozen beef within their respective countries which will satisfy the certification requirements of paragraph (a) of this section: Canada.

[T.D. 82–8, 47 FR 945, Jan. 8, 1982, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

WATCHES AND WATCH MOVEMENTS FROM U.S. INSULAR POSSESSIONS

§§ 10.181–10.182 [Reserved]

CIVIL AIRCRAFT

§ 10.183 Duty-free entry of civil aircraft, aircraft engines, ground flight simulators, parts, components, and subassemblies.

(a) *Applicability*. Except as provided in paragraph (b) of this section, this section applies to aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, that qualify as civil aircraft under General Note 6(b) ofthe Harmonized Tariff Schedule of the United States (HTSUS) by meeting the following requirements:

(1) The aircraft, aircraft engines, ground flight simulators, or their parts, components, and subassemblies, are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(2) They are either:

(i) Manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (FAA) under 49 U.S.C. 44704 or pursuant to the approval of the airworthiness authority in the country of exportation, if that approval is recognized by the FAA as an acceptable substitute for the FAA certificate;

(ii) Covered by an application for such certificate, submitted to and accepted by the FAA, filed by an existing type and production certificate holder pursuant to 49 U.S.C. 44702 and implementing regulations (Federal Aviation Administration Regulations, title 14, Code of Federal Regulations); or

(iii) Covered by an application for such approval or certificate which will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the FAA (applicable only to the quantities of parts, components, and subassemblies as are required to meet the stipulation).

(b) *Department of Defense or U.S. Coast Guard use*. If purchased for use by the Department of Defense or the United States Coast Guard, aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, are subject to this section only if they are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft and meet the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(c) *Claim for admission free of duty*. Merchandise qualifying under paragraph (a) or paragraph (b) of this section is entitled to duty-free admission in accordance with General Note 6,

HTSUS, upon meeting the requirements of this section. An importer will make a claim for duty-free admission under this section and General Note 6, HTSUS, by properly entering qualifying merchandise under a provision for which the rate of duty ''Free (C)'' appears in the ''Special'' subcolumn of the HTSUS and by placing the special indicator ''C'' on the entry summary. The fact that qualifying merchandise has previously been exported with benefit of drawback does not preclude free entry under this section.

(d) *Importer certification.* In making a claim for duty-free admission as provided for under paragraph (c) of this section, the importer is deemed to certify, in accordance with General Note 6(a)(ii), HTSUS, that the imported merchandise is, as described in paragraph (a) or paragraph (b) of this section, a civil aircraft or has been imported for use in a civil aircraft and will be so used.

(e) *Documentation.* Each entry summary claiming duty-free admission for imported merchandise in accordance with paragraph (c) of this section must be supported by documentation to verify the claim for duty-free admission, including the written order or contract and other evidence that the merchandise entered qualifies under General Note 6, HTSUS, as a civil aircraft, aircraft engine, or ground flight simulator, or their parts, components, and subassemblies. Evidence that the merchandise qualifies under the general note includes evidence of compliance with paragraph (a)(1) of this section concerning use of the merchandise and evidence of compliance with the airworthiness certification requirement of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section, including, as appropriate in the circumstances, an FAA certification; approval of airworthiness by an airworthiness authority in the country of export and evidence that the FAA recognizes that approval as an acceptable substitute for an FAA certification; an application for a certification submitted to and accepted by the FAA; a type and production certificate issued by the FAA; and/or evidence that a type and production certificate holder will submit an application for certification or approval in the future pending completion of design or other technical requirements stipulated by the FAA and of estimates of quantities of parts, components, and subassemblies as are required to meet design and technical requirements stipulated by the FAA. This documentation need not be filed with the entry summary but must be maintained in accordance with the general note and with the recordkeeping provisions of part 163 of this chapter. Customs may request production of documentation at any time to verify the claim for duty-free admission. Failure to produce documentation sufficient to satisfy the port director that the merchandise qualifies for duty-free admission will result in a denial of duty-free treatment and may result in such other measures permitted under the regulations as the port director finds necessary to more closely monitor the importer's importations of merchandise claimed to be duty-free under this section. Proof of end use of the entered merchandise need not be maintained.

(f) *Post-entry claim.* An importer may file a claim for duty-free treatment under General Note 6, HTSUS, after filing an entry that made no such duty-free claim, by filing a written statement with Customs any time prior to liquidation of the entry or prior to the liquidation becoming final. When filed, the written statement constitutes the importer=s claim for duty-free treatment under the general note and its certification that the entered merchandise is a civil aircraft or has been imported for use in a civil aircraft and will be so used. In accordance with General Note 6, HTSUS, any refund resulting from a claim made under this paragraph will be without interest, notwithstanding the provision of 19 U.S.C. 1505(c).

(g) *Verification.* The port director will monitor and periodically audit selected entries made under this section.

[T.D. 02–31, 67 FR 39289, June 7, 2002]

Subpart B—Caribbean Basin Initiative

SOURCE: Sections 10.191 through 10.197 issued by T.D. 84–237, 49 FR 47993, Dec. 7, 1984, unless otherwise noted.

§ 10.191 General.

(a) *Statutory authority*. Subtitle A, Title II, Pub. L. 98–67, entitled the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2706) and referred to as the Caribbean Basin Initiative (CBI), authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country.

(b) *Definitions*—(1) *Beneficiary country*. For purposes of §§10.191 through 10.199 and except as otherwise provided in §10.195(b), the term ''beneficiary country'' means any country or territory or successor political entity with respect to which there is in effect a proclamation by the President designating such country, territory or successor political entity as a beneficiary country in accordance with section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)). *See* General Note 7(a), Harmonized Tariff Schedule of the United States (HTSUS). For purposes of this paragraph, when the word ''former'' is used in conjunction with the term ''beneficiary country'', it means a country that ceases to be designated as a beneficiary country under the CBERA because the country has become a party to a free trade agreement with the United States. *See* General Note 7(b)(i)(C), HTSUS.

(2) *Eligible articles*. Except as provided herein, for purposes of §10.191(a), the term ''eligible articles'' means any merchandise which is imported directly from a beneficiary country as provided in §10.193 and which meets the country of origin criteria set forth in §10.195 or in §10.198b. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the CBI.

(i) Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date.

(ii) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467).

(iii) Tuna, prepared or preserved in any manner, in airtight containers.

(iv) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710, HTSUS.

(v) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply.

(vi) Articles to which reduced rates of duty apply under §10.198a.

(vii) Sugars, sirups, and molasses, provided for in subheadings 1701.11.00 and 1701.12.00, HTSUS, to the extent that importation and duty-free treatment of such articles are limited by Additional U.S. Note 4, Chapter 17, HTSUS.

(viii) Articles subject to the provisions of the subheadings of Subchapter III, from the beginning through 9903.85.21, Chapter 99, HTSUS, to the extent that such provisions have not been modified or terminated by the President pursuant to section 213(e)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(5)).

(ix) Merchandise for which duty-free treatment under the CBI is suspended or withdrawn by the President pursuant to sections 213 (c)(2), (e)(1), or (f)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 (c)(2), (e)(1), or (f)(3)).

(3) *Wholly the growth, product, or manufacture of a beneficiary country*. For purposes of §10.191 through §10.199, the expression ''wholly the growth, product, or manufacture of a beneficiary country'' refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country.

(4) *Entered.* For purposes of § 10.191 through § 10.199, the term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 00–68, 65 FR 59657, Oct. 5, 2000; T.D. 01–17, 66 FR 9645, Feb. 9, 2001; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.192 Claim for exemption from duty under the CBI.

A claim for an exemption from duty on the ground that the CBI applies shall be allowed by the port director only if he is satisfied that the requirements set forth in this section and § 10.193 through § 10.198b have been met. Duty-free treatment may be claimed at the time of filing the entry summary by placing the symbol ''E'' as a prefix to the HTSUS subheading number for each article for which such treatment is claimed on that document.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 94–47, 59 FR 25570, May 17, 1994; T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.193 Imported directly.

To qualify for treatment under the CBI, an article shall be imported directly from a beneficiary country into the customs territory of the U.S. For purposes of § 10.191 through § 10.198b the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the U.S. without passing through the territory of any non-beneficiary country; or

(b) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commericial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.194 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.193. Any evidence of direct shipment required shall be subject to such verification as deemed necessary by the port director.

(b) *Waiver of evidence of direct shipment.* The port director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for treatment under the CBI.

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country*—(1) *General.* Except as provided herein, any article which is either wholly the growth, product, or manufacture of a beneficiary country or a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty-free entry under the CBI. No article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with

another substance that does not materially alter the characteristics of the article. Duty-free entry under the CBI may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary country within the meaning of paragraph (a)(1) of this section shall be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph.

(i) For purposes of this section, simple combining or packaging operations and mere dilution include, but are not limited to, the following processes:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering etc.;

(C) Blending foreign and beneficiary country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength.

(ii) For purposes of this section, simple combining or packaging operations and mere dilution shall not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (*e.g.*, a simple assembly of a small number of components, one of which was fabricated in the beneficiary country where the assembly took place).

The fact that an article or material has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article or material.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands, and former beneficiary countries*—(1) *General.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico, U.S. Virgin Islands, and any former beneficiary countries. Any cost or value of materials or direct costs of processing operations attributable to the U.S. Virgin Islands or any former beneficiary country must be included in the article prior to its final exportation from a beneficiary country to the United States.

(2) *Manufacture in the Commonwealth of Puerto Rico after final exportation.* Notwithstanding the provisions of 19 U.S.C. 1311, if an article from a beneficiary country is entered under bond for processing or use in manufacturing in the Commonwealth of Puerto Rico, no duty will be imposed on the withdrawal from warehouse for consumption of the product of that processing or manufacturing provided that:

(i) The article entered in the warehouse in the Commonwealth of Puerto Rico was grown, produced, or manufactured in a beneficiary country within the meaning of paragraph (a) of this section and was imported directly from a beneficiary country within the meaning of § 10.193; and

(ii) At the time of its withdrawal from the warehouse, the product of the processing or manufacturing in the Commonwealth of Puerto Rico meets

the 35 percent value-content requirement prescribed in paragraph (a) of this section.

(c) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico). In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply.

(d) *Textile components cut to shape in the U.S.* The percentage referred to in paragraph (c) of this section may be attributed in whole or in part to the cost or value of a textile component that is cut to shape (but not to length, width, or both) in the U.S. (including the Commonwealth of Puerto Rico) from foreign fabric and exported to a beneficiary country for assembly into an article that is then returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. For purposes of this paragraph, the terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in § 102.21(b)(5) of this chapter.

(e) *Articles wholly grown, produced, or manufactured in a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirements set forth in paragraph (a) of this section.

(f) *Country of origin marking.* The general country of origin marking requirements that apply to all importations are also applicable to articles imported under the CBI.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984, as amended by T.D. 95–69, 60 FR 46197, Sept. 5, 1995; T.D. 95–69, 60 FR 55995, Nov. 6, 1996; T.D. 00–68, 65 FR 59658, Oct. 5, 2000; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.196 Cost or value of materials produced in a beneficiary country or countries.

(a) *''Materials produced in a beneficiary country or countries'' defined.* For purposes of § 10.195, the words ''materials produced in a beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(1) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(2) Subject to the limitations set forth in § 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the U.S.

Example 1. A raw, perishable skin of an animal grown in one beneficiary country is sent to another beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned product is then imported directly into the U.S. Because the material of which the imported article is composed is wholly the growth, product, or manufacture of one of more beneficiary countries, the entire cost or value of that material may be counted toward the 35 percent value requirement set forth in § 10.195.

Example 2. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than an intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.

Example 3. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is

tanned to create nonperishable ''crust leather''. The tanned material is then cut, sewn and assembled with a metal buckle imported from a non-beneficiary country to create a finished belt which is imported directly into the U.S. Because the operations performed in the beneficiary country involved both the substantial transformation of the raw skin into a new or different article and the use of that intermediate article in the production or manufacture of a new or different article imported into the U.S., the cost or value of the tanned material used to make the imported article may be counted toward the 35 percent value requirement. The cost or value of the metal buckle imported into the beneficiary country may not be counted toward the 35 percent value requirement because the buckle was not substantially transformed in the beneficiary country into a new or different article prior to its incorporation in the finished belt.

Example 4. A raw, perishable skin of an animal grown in the U.S. Virgin Islands is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather'', which is then imported directly into the U.S. The tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), and under § 10.195(b), the raw skin from which the tanned product was made is considered to have been grown in a beneficiary country for the purpose of applying the 35 percent value requirement. The tanned material of which the imported article is composed is considered to be wholly the growth, product, or manufacture of one or more beneficiary countries with the result that the entire cost or value of that material may be counted toward the 35 percent value requirement.

(b) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country.

(c) *Determination of cost or value of materials produced in a beneficiary country.* (1) The cost or value of materials produced in a beneficiary country or countries includes:

(i) The manufacturer's actual cost for the materials;

(ii) 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;

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

(iv) Taxes and/or duties imposed on the materials by any beneficiary country, provided they are not remitted upon exportation.

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

(i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) An amount for profit; and

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

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.197 Direct costs of processing operations performed in a beneficiary country or countries.

(a) *Items included in the direct costs of processing operations.* As used in § 10.195 and § 10.198, 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 merchandise 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 merchandise:

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

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

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

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words ''direct costs of processing operations'' are those which are not directly attributable to the merchandise under consideration or are not ''costs'' of manufacturing the product. These include, but are not limited to:

(1) Profit; and

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

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984]

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(i) *Declaration.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

CBI DECLARATION

I, _____,
(name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation.* In a case in which value is added to an article in a bonded warehouse or in a foreign-trade zone in the Commonwealth of Puerto Rico or in the U.S.

after final exportation of the article from a beneficiary country, in order to ensure compliance with the value requirement under § 10.195(a), the declaration provided for in paragraph (a)(1)(i) of this section shall be filed by the importer or consignee with the entry summary as evidence of the country of origin. The declaration shall be properly completed by the party responsible for the addition of such value.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary country.* In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry.* Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the port director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any evidence of country of origin submitted under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable.

[T.D. 94–47, 59 FR 25570, May 17, 1994]

§ 10.198a Duty reduction for certain leather-related articles.

Except as otherwise provided in § 10.233, reduced rates of duty as proclaimed by the President will apply to handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467), provided that the article in question at the time it is entered:

(a) Was grown, produced, or manufactured in a beneficiary country within the meaning of § 10.195;

(b) Meets the 35 percent value-content requirement prescribed in § 10.195; and

(c) Was imported directly from a beneficiary country within the meaning of § 10.193.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.198b Products of Puerto Rico processed in a beneficiary country.

Except in the case of any article described in § 10.191(b)(2)(i) through (vi), the duty-free treatment provided for under the CBI will apply to an article that is the growth, product, or manufacture of the Commonwealth of Puerto Rico and that is by any means advanced in value or improved in condition in a beneficiary country, provided that:

(a) If any materials are added to the article in the beneficiary country, those materials consist only of materials that are a product of a beneficiary country or the United States; and

(b) The article is imported directly from the beneficiary country into the customs territory of the United States within the meaning of § 10.193.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

(a) *General.* A spirituous beverage that is imported directly from the territory of Canada and that is classifiable under subheading 2208.40 or 2208.90, Harmonized Tariff Schedule of the United States (HTSUS), will be entitled, upon entry or withdrawal from warehouse for consumption, to duty-free treatment under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), also known as the Caribbean Basin Initiative (CBI), if the spirituous beverage has been produced in the territory of Canada from rum, provided that the rum:

(1) Is the growth, product, or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) Was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and

(3) Accounts for at least 90 percent of the alcoholic content by volume of the spirituous beverage.

(b) *Claim for exemption from duty under CBI.* A claim for an exemption from duty for a spirituous beverage under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)) may be made by entering such beverage under subheading 9817.22.05, HTSUS, on the entry summary document or its electronic equivalent. In order to claim the exemption, the importer must have the records described in paragraphs (d), (e), (f) and (g) of this section so that, upon Customs request, the importer can establish that:

(1) The rum used to produce the beverage is the growth, product or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) The rum was shipped directly from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The beverage was produced in Canada;

(4) The rum accounts for at least 90% of the alcohol content of the beverage; and

(5) The beverage was shipped directly from Canada to the United States.

(c) *Imported directly.* For a spirituous beverage imported from Canada to qualify for duty-free entry under the CBI, the spirituous beverage must be imported directly into the customs territory of the United States from Canada; and the rum used in its production must have been imported directly into the territory of Canada either from a beneficiary country or from the U.S. Virgin Islands.

(1) ''Imported directly'' into the customs territory of the United States from Canada means:

(i) Direct shipment from the territory of Canada to the U.S. without passing through the territory of any other country; or

(ii) If the shipment is from the territory of Canada to the U.S. through the territory of any other country, the spirituous beverages do not enter into the commerce of any other country while en route to the U.S.; or

(iii) If the shipment is from the territory of Canada to the U.S. through the territory of another country, and the invoices and other documents do not show the U.S. as the final destination, the spirituous beverages in the shipment are imported directly only if they:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(C) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the products in good condition.

(2) ''Imported directly'' from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada means:

(i) Direct shipment from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada without passing through the territory of any non-beneficiary country; or

(ii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum does not enter into the commerce of any non-beneficiary country while en route to Canada; or

(iii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum in the shipment is imported directly into the territory of Canada only if it:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail; and

(C) Was not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the product in good condition.

(d) *Evidence of direct shipment*—(1) *Spirituous beverages imported from Canada.* The importer must be prepared to provide to the port director, if requested, documentary evidence that the spirituous beverages were imported

directly from the territory of Canada, as described in paragraph (c)(1) of this section. This evidence may include documents such as a bill of lading, invoice, air waybill, freight waybill, or cargo manifest. Any evidence of the direct shipment of these spirituous beverages from Canada into the U.S. may be subject to such verification as deemed necessary by the port director.

(2) *Rum imported into Canada from beneficiary country or U.S. Virgin Islands*. The importer must be prepared to provide to the port director, if requested, evidence that the rum used in producing the spirituous beverages was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands, as described in paragraph (c)(2) of this section. This evidence may include documents such as a Canadian customs entry, Canadian customs invoice, Canadian customs manifest, cargo manifest, bill of lading, landing certificate, airway bill, or freight waybill. Any evidence of the direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada for use there in producing the spirituous beverages may be subject to such verification as deemed necessary by the port director.

(e) *Origin of rum used in production of the spirituous beverage*—(1) *Origin criteria*. In order for a spirituous beverage covered by this section to be entitled to duty-free entry under the CBI, the rum used in producing the spirituous beverage in the territory of Canada must be wholly the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands, or must constitute a new or different article of commerce that was produced or manufactured in a beneficiary country or in the U.S. Virgin Islands. Such rum will not be considered to have been grown, produced, or manufactured in a beneficiary country or in the U.S. Virgin Islands by virtue of having merely undergone blending, combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the product.

(2) *Evidence of origin of rum*—(i) *Declaration*. The importer must be prepared to submit directly to the port director, if requested, a declaration prepared and signed by the person who produced or manufactured the rum, affirming that the rum is the growth, product or manufacture of a beneficiary country or of the U.S. Virgin Islands. While no particular form is prescribed for the declaration, it must include all pertinent information concerning the processing operations by which the rum was produced or manufactured, the address of the producer or manufacturer, the title of the party signing the declaration, and the date it is signed.

(ii) *Records supporting declaration*. The supporting records, including those production records, that are necessary for the preparation of the declaration must also be available for submission to the port director if requested. The declaration and any supporting evidence as to the origin of the rum may be subject to such verification as deemed necessary by the port director.

(f) *Canadian processor declaration; supporting documentation*—(1) *Canadian processor declaration*. The importer must be prepared to submit directly to the port director, if requested, a declaration prepared by the person who produced the spirituous beverage(s) in Canada, setting forth all pertinent information concerning the production of the beverages. The declaration will be in substantially the following form:

I, _____ declare that the spirituous beverages here specified are the products that were produced by me (us), as described below, with the use of rum that was received by me (us); that the rum used in producing the beverages was received by me (us) on _____ (date), from _____ (name and address of owner or exporter in the beneficiary country or in the U.S. Virgin Islands, as applicable); and that such rum accounts for at least 90 percent of the alcoholic content by volume, as shown below, of each spirituous beverage so produced.

Marks and numbers	Description of products and of processing	Alcoholic content of products; alcoholic content (%) attributable to rum [1]
.....	.....	.....
.....	.....	.....

Marks and numbers	Description of products and of processing	Alcoholic content of products; alcoholic content (%) attributable to rum [1]
.....	.....	.....

[1] The production records must establish, for each lot of beverage produced, the quantity of rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands under 19 U.S.C. 2703(a)(6) that is used in producing the finished beverage; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum. If rum from two or more qualifying sources (*e.g.,* rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands and other rum the growth, product or manufacture of another CBI country) are used in processing the beverage, the alcoholic content requirement may be met by aggregating the alcoholic content of the finished beverage that is attributable to rum from each of the qualifying sources used in processing the finished beverage, as reflected in the production records.

Date _____
Address _____
Signature _____
Title _____

(2) *Availability of supporting documents*. The information, including any supporting documents and records, necessary for the preparation of the declaration, as described in paragraph (f)(1) of this section, must be available for submission to the port director, if requested. The declaration and any supporting evidence may be subject to such verification as deemed necessary by the port director. The specific documentary evidence necessary to support the declaration consists of those documents and records which satisfactorily establish:

(i) The receipt of the rum by the Canadian processor, including the date of receipt and the name and address of the party from whom the rum was received (the owner or exporter in the beneficiary country or the U.S. Virgin Islands); and

(ii) For each lot of beverage produced and included in the declaration, the specific identification of the production lot(s) involved; the quantity of qualifying rum that is used in producing the finished beverage, including a description of the processing and of the finished products; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum.

(g) *Importer system for review of necessary recordkeeping*. The importer will establish and implement a system of internal controls which demonstrate that reasonable care was exercised in its claim for duty-free treatment under the CBI. These controls should include tests to assure the accuracy and availability of records that establish:

(1) The origin of the rum;

(2) The direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The alcohol content of the finished beverage imported from Canada; and

(4) The direct shipment of the finished beverage from Canada to the United States.

(h) *Submission of documents to Customs*. The importer must be prepared to submit directly to the port director, if requested, those documents and/or supporting records as described in paragraphs (d), (e) and (f) of this section, for a period of 5 years from the date of entry of the related spirituous beverages under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), as provided in § 163.4(a) of this chapter. If requested, the importer must submit such documents and/or supporting records to the port director within 60 calendar days of the date of the request or such additional period as the port director may allow for good cause shown.

[T.D. 02–59, 67 FR 62882, Oct. 9, 2002]

Subpart C—Andean Trade Preference

SOURCE: Sections 10.201 through 10.208 appear at T.D. 98–76, 63 FR 51292, Sept. 25, 1998, unless otherwise noted.

§ 10.201 Applicability.

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of §§ 10.202 through 10.207 set

forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the ''Special'' rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles under the ATPA are contained in §§ 10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in §§ 10.251 through 10.257.

[T.D. 03–16, 68 FR 14486, Mar. 25, 2003; 68 FR 67338, Dec. 1, 2003]

§ 10.202 Definitions.

The following definitions apply for purposes of §§ 10.201 through 10.207:

(a) *Beneficiary country*. Except as otherwise provided in § 10.206(b), the term ''beneficiary country'' refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) *Eligible articles*. The term ''eligible'' when used with reference to an article means merchandise which is imported directly from a beneficiary country as provided in § 10.204, which meets the country of origin criteria set forth in § 10.205 and the value-content requirement set forth in § 10.206, and which, if the requirements of § 10.207 are met, is therefore entitled to duty-free treatment under the ATPA. However, the following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in §§ 10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in §§ 10.251 through 10.257.

(c) *Entered*. The term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) *Wholly the growth, product, or manufacture of a beneficiary country*. The expression ''wholly the growth, product, or manufacture of a beneficiary country'' has the same meaning as that set forth in § 10.191(b)(3) of this part.

[T.D. 98–76, 63 FR 51292, Sept. 25, 1998, as amended by T.D. 03–16, 68 FR 14486, Mar. 25, 2003; 68 FR 67338, Dec. 1, 2003]

§ 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of ''Free'' appears in the ''Special'' subcolumn followed by the symbol ''J'' or ''J*'' in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) *Imported directly*. The article is imported directly from a beneficiary country as provided in § 10.204.

(b) *Country of origin criteria*. The article complies with the country of origin criteria set forth in § 10.205.

(c) *Value content requirement*. The article complies with the value content requirement set forth in § 10.206.

(d) *Filing of claim and submission of supporting documentation*. The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.207.

§ 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country; or

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the non-beneficiary country while en route to the United States, and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(c) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country and the invoices and other documents do not show the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.205 Country of origin criteria.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Exceptions*. No article shall be eligible for duty-free treatment under the ATPA by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

§ 10.206 Value content requirement.

(a) *General*. An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries*. For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in § 10.202(a).

(c) *Materials produced in the United States*. For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(d) *Cost or value of materials*—(1) *''Materials produced in a beneficiary country or countries'' defined*. For purposes of paragraph (a) of this section, the words *materials produced in a beneficiary country or countries* refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country

or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in § 10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a) of this part, and the principles and examples set forth in § 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin*. When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials*. (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) 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;

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

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

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

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

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

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations*—(1) *Items included*. For purposes of paragraph (a) 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 merchandise 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 merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, 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 merchandise;

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

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

(2) *Items not included*. For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

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

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in § 10.202(a), and any article produced or manufactured in a beneficiary country as defined in § 10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol ''J'' as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in § 10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a

timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation*. In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in § 10.202(a), in order to ensure compliance with the value requirement under § 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) *Articles wholly the growth, product, or manufacture of a beneficiary country*. In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) *Shipments covered by an informal entry*. The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the port director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) *Evidence of direct importation*—(1) *Submission*. The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.204.

(2) *Waiver*. The port director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) *Verification of documentation*. The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as fully dutiable.

Subpart D—Textile and Apparel Articles Under the African Growth and Opportunity Act

SOURCE: CBP Dec. 14-07, 79 FR 30392, May 27, 2014, unless otherwise noted.

§ 10.211 Applicability.

Title I of Public Law 106–200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211–10.217 of this part set forth the legal requirements and procedures that apply for purposes of extending preferential treatment pursuant to section 112.

§ 10.212 Definitions.

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

(a) *Apparel articles*. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6504 and subheadings 6406.90.15 and 6505.00.02–6505.00.90, of the HTSUS;

(b) *Beneficiary country*. ''Beneficiary country'' means a country listed in section 107 of the AGOA (19 U.S.C. 3706) which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722) and which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a). *See* U.S. Note 1, Subchapter XIX,

Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS);

(c) *Cut in one or more beneficiary countries.* ''Cut in one or more beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and final assembly of the article in one or more beneficiary countries, or both;

(d) *Ethnic printed fabrics.* ''Ethnic printed fabrics'' means fabrics:

(1) Containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the HTSUS;

(2) Of the type that contains designs, symbols, and other characteristics of African prints:

(i) Normally produced for and sold on the indigenous African market; and

(ii) Normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;

(3) Printed, including waxed, in one or more eligible beneficiary countries; and

(4) Formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary countries from yarn originating in either the United States or one or more beneficiary countries;

(e) *Foreign origin.* ''Foreign origin'' means, in the case of a finding or trimming of non-textile materials, that the finding or trimming is a product of a country other than the United States or a beneficiary country and, in the case of a finding, trimming, or interlining of textile materials, that the finding, trimming, or interlining does not meet all of the United States and beneficiary country or former beneficiary country production requirements for yarns, fabrics, and/or components specified under § 10.213(a) for the article in which it is incorporated;

(f) *Former beneficiary country.* ''Former beneficiary country'' means a country that, after being designated by the President as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a free trade agreement with the United States;

(g) *HTSUS.* ''HTSUS'' means the Harmonized Tariff Schedule of the United States;

(h) *Knit-to-shape articles.* ''Knit-to-shape,'' when used with reference to sweaters or other apparel articles, means any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape;''

(i) *Knit-to-shape components.* ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape;''

(j) *Lesser developed beneficiary country.* ''Lesser developed beneficiary country'' means a country that is enumerated in U.S. Note 2(d), Subchapter XIX, Chapter 98, HTSUS and that is also enumerated in U.S. Note 1, Subchapter XIX, Chapter 98, HTSUS. *See* section 112(c)(3) of the AGOA (19 U.S.C. 3721(c)(3));

(k) *Major parts.* ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components;

(l) *NAFTA.* ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992;

(m) *Originating.* ''Originating'' means having the country of origin determined by application of the provisions of § 102.21 of this chapter;

(n) *Preferential treatment.* ''Preferential treatment'' means entry, or

withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations, as provided in 19 U.S.C. 3721(a);

(o) *Self-start edge*. ''Self-start edge,'' when used with reference to knit-to-shape components, means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine;

(p) *Sewing thread*. ''Sewing thread'' means thread designed and used for the assembly or hemming of textile or apparel components or articles;

(q) *Sewn or otherwise assembled in one or more beneficiary countries*. ''Sewn or otherwise assembled in one or more beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States;

(r) *Wholly assembled in*. ''Wholly assembled,'' when used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries;

(s) *Wholly formed fabrics*. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in the United States or in one or more beneficiary countries or former beneficiary countries. For purposes of this definition, dyeing, printing and finishing operations are not production processes that involve fabric formation (*see* § 10.213(b)(1));

(t) *Wholly formed on seamless knitting machines*. ''Wholly formed on seamless knitting machines,'' when used to describe apparel articles, has reference to a process that created a knit-to-shape apparel article by feeding yarn(s) into a knitting machine to result in that article. When taken from the knitting machine, an apparel article created by this process either is in its final form or requires only minor cutting or trimming or the addition of minor components or parts such as patch pockets, appliques, capping, or elastic strip; and

(u) *Wholly formed yarns*. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament, slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in a single country. For purposes of this definition, dyeing, printing and finishing operations are not production processes that involve yarn formation (*see* § 10.213(b)(1)).

§ 10.213 Articles eligible for preferential treatment.

(a) *General*. The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to shape, in the United States, from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, or both (including fabrics not formed

from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with sewing thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classified under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States);

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in one or more beneficiary countries), or from components knit-to-shape in one or more beneficiary countries from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both, or apparel articles wholly formed on seamless knitting machines in a beneficiary country from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both, whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), (2) or (3) of this section (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), (2), or (3) of this section), subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(5) Apparel articles wholly assembled, or knit to shape and wholly assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make the articles, subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.12 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles, other than brassieres classifiable under subheading 6212.10, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, provided that the apparel articles would be considered an originating good under General Note 12(t) HTSUS, without regard to the source of the fabric or yarn of which the articles are made, if the apparel articles had been imported directly from Canada or Mexico;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabrics or yarn that the President or his designee has designated in the FEDERAL REGISTER as not available in commercial quantities in the United States;

(10) A handloomed, handmade, or folklore article or an ethnic printed fabric of a beneficiary country or countries that is certified as a handloomed, handmade, or folklore article or an ethnic printed fabric by the competent authority of the beneficiary country or countries, provided that the President or his designee has determined that the article in question will be treated as being a handloomed, handmade, or

folklore article or an ethnic printed fabric;

(11) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with sewing thread formed in the United States:

(i) From components cut in the United States and one or more beneficiary countries or former beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more beneficiary countries or former beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(11)(i) or paragraph (a)(11)(ii) of this section; and

(12) Textile and textile articles classifiable under Chapters 50 through 60 or Chapter 63 of the HTSUS that are products of a lesser developed beneficiary country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing and other finishing operations do not constitute part of a yarn or fabric or component formation process. Those operations may be performed on any yarn (including sewing thread) or fabric or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a beneficiary country and not in any other country. However, in the case of an assembled article described in paragraph (a)(1) or (2) of this section, a dyeing, printing or other finishing operation may be performed in a beneficiary country without affecting the eligibility of the article for preferential treatment only if that operation is incidental to the assembly process.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a beneficiary country and not in any other country. However, in the case of an assembled article described in paragraph (a)(1) of this section, an operation may be performed in a beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process.

(c) *Special rules for certain component materials*—(1) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings

and interlinings does not exceed 25 percent of the cost of the components of the assembled article;

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries or former beneficiary countries if the total weight of all those fibers and yarns is not more than 10 percent of the total weight of the article; or

(v) Any collars or cuffs (cut or knit-to-shape), drawstrings, shoulder pads or other padding, waistbands, belt attached to the article, straps containing elastic, or elbow patches that do not meet the requirements set forth in paragraph (a) of this section, regardless of the country of origin of the applicable component referred to in this paragraph.

(2) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1) of this section means:

(i) The ex-factory price of the components, findings and trimmings or interlinings as set out in the invoice or other commercial documents, or, if the price is other than ex-factory, the price as set out in the invoice or other commercial documents adjusted to arrive at an ex-factory price; or

(ii) If the price cannot be determined under paragraph (c)(2)(i) of this section or if that price is unreasonable, all reasonable expenses incurred in the growth, production, manufacture or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit.

(3) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1) of this section.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;

(2) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.214 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared in the beneficiary country by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the facts in the form specified in paragraph (b) of this section. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate of Origin on the basis of:

(1) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

(b) *Form of Certificate*. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

AFRICAN GROWTH AND OPPORTUNITY ACT TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name and Address:	3. Importer Name and Address:
2. Producer Name and Address:	4. Preference Group:

5. Description of Article:

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
1–A	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States.	10.213(a)(1).
2–B	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.	10.213(a)(2).
3–C	Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. *and* beneficiary country or former beneficiary country knit-to-shape components, from U.S. yarns and sewing thread. The U.S. fabrics may be cut in beneficiary countries or in the United States *and* beneficiary countries or former beneficiary countries.	10.213(a)(3) or 10.213(a)(11).
4–D	Apparel assembled from beneficiary country fabrics and/or knit-to-shape components, from yarns originating in the United States and/or one or more beneficiary countries or former beneficiary countries.	10.213(a)(4).
5–E	Apparel assembled or knit-to-shape and assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make such articles.	10.213(a)(5).
6–F	Knit-to-shape sweaters in chief weight of cashmere	10.213(a)(6).
7–G	Knit-to-shape sweaters 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer.	10.213(a)(7).
8–H	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.213(a)(8) or 10.213(a)(9).
9–I	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles—as defined in bilateral consultations; ethnic printed fabric.	10.213(a)(10).
0–J	Textile articles classifiable in Chapters 50 through 60 or Chapter 63, HTSUS, that are products of a lesser developed beneficiary country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries.	10.213(a)(12).

6. U.S./African Fabric Producer Name and Address:	7. U.S./African Yarn Producer Name and Address:
	8. U.S. Thread Producer Name and Address:
9. Handloomed, Handmade, or Folklore Article or Ethnic Printed Fabric:	10. Name of Short Supply or Designated Fabric or Yarn:

I certify that the information on this document is complete 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 certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17. Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to CBP upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the number and/or letter that identifies the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed, handmade or an ethnic printed fabric;

(12) Block 10, should be completed only when preference group identifier ''8'' and/or ''H'' is inserted in block 4 and should state the name of the fabric or yarn that is in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or producer or of the exporter's or producer's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (*see* § 10.216(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires;

(16) The telephone and facsimile numbers included in block 17 should be those at which the person who signed the Certificate may be contacted; and

(17) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.215 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with

§ 10.214, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the CBP port where the declaration was originally filed.

§ 10.216 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.215 must maintain, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose;

(2) Must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to CBP upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.214(c)(15), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US $2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent
Name
Title
Address
Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.214 through 10.216, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.217 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP*. A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to CBP under § 10.216, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.215, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.213(a). If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.214(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.213(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from CBP, how the records and internal controls referred to in paragraphs (b)(1) through (3) of this section justify the importer's claim for preferential treatment.

Subpart E—United States-Caribbean Basin Trade Partnership Act

TEXTILE AND APPAREL ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

SOURCE: T.D. 00–68, 65 FR 59658, Oct. 5, 2000, unless otherwise noted.

§ 10.221 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Basin Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(2) of the CBERA (19 U.S.C. 2703(b)(2)) provides for the preferential treatment of certain textile and apparel articles from CBERA beneficiary countries. The provisions of §§ 10.221–10.227 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to CBERA section 213(b)(2).

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000]

§ 10.222 Definitions.

When used in §§ 10.221 through 10.228, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more CBTPA beneficiary countries. ''Assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components that occurred in one or more CBTPA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

Cut in one or more CBTPA beneficiary countries. ''Cut in one or more CBTPA beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more CBTPA beneficiary countries.

Foreign. ''Foreign'' means of a country other than the United States or a CBTPA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term ''knit-to-shape'' applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder

bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

Made in one or more CBTPA beneficiary countries. ''Made in one or more CBTPA beneficiary countries'' when used with reference to non-underwear t-shirts means cut in one or more CBTPA beneficiary countries and wholly assembled in one or more CBTPA beneficiary countries.

Major parts. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 2703(b)(2).

Wholly assembled in one or more CBTPA beneficiary countries. ''Wholly assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of all components (including thread, decorative embellishments, buttons, zippers, or similar components) that occurred only in one or more CBTPA beneficiary countries.

Wholly formed. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including slitting a film or sheet into strip or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000; T.D. 01–74, 66 FR 50537, Oct. 4, 2001, as amended by T.D. 03–12, 68 FR 13831, Mar. 21, 2003]

§ 10.223 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.221 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a CBTPA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(2) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking,

bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(3) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(4) Apparel articles (other than socks provided for in heading 6115 of the HTSUS) knit to shape in a CBTPA beneficiary country from yarns wholly formed in the United States, and knitted or crocheted apparel articles (other than non-underwear t-shirts classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS and described in paragraph (a)(5) of this section) cut and wholly assembled in one or more CBTPA beneficiary countries from fabrics formed in one or more CBTPA beneficiary countries or in one or more CBTPA beneficiary countries and the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

(5) Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States;

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more CBTPA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(5), paragraphs (a)(7) through (a)(9), or paragraph (a)(12), and provided that any applicable additional requirements set forth in §10.228 are met;

(7) Apparel articles, other than articles described in paragraph (a)(6) of this section, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics or yarn that the President or his designee has designated in the FEDERAL REGISTER as not available in commercial quantities in the United States;

(9) A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President or his designee and representatives of the CBTPA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the CBTPA beneficiary country;

(10) Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(11) Textile luggage assembled in a CBTPA beneficiary country from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States;

(12) Knitted or crocheted apparel articles cut and assembled in one or more CBTPA beneficiary countries from fabrics wholly formed in the United States

from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed wholly in the United States), provided that the assembly is with thread formed in the United States, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section; and

(13) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(13)(i) or paragraph (a)(13)(ii) of this section; and

(iv) Provided that any processing not described in this paragraph (a)(13) conforms to the rules set forth in paragraph (b) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), (a)(3), (a)(12), or (a)(13) of this section that is entered on or after September 1, 2002, and that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, fibers and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less

than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) or (a)(12) of this section;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article, except in the case of any apparel article described in paragraph (a)(1) through (a)(5) or (a)(12) of this section containing elastomeric yarns which will be eligible for preferential treatment only if those yarns are wholly formed in the United States.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1), (a)(2), (a)(3) or (a)(12) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from Canada, Mexico or Israel.

(3) *Dyed, printed, or finished thread.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of

any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000, as amended by T.D. 01–74, 66 FR 50537, Oct. 4, 2001; T.D. 03–12, 68 FR 13832, Mar. 21, 2003]

§ 10.224 Certificate of Origin.

(a) *General*. A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a CBTPA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.221. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country in the form specified in paragraph (b) of this section. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate*. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	4. Preference Group:
5. Description of Article:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
A.	Apparel assembled from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(1)
B.	Apparel assembled and further processed from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(2)
C.	Apparel (except apparel in group K) assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(3)
D.	Apparel knit-to-shape in the region from U.S. yarn (except socks in heading 6115); and knit apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn. This group does not include non-underwear t-shirts in group E.	10.223(a)(4)
E.	Non-underwear t-shirts in subheading 6109.10.00 & 6109.90.10 made of regional fabric from U.S. yarn.	10.223(a)(5)
F.	Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries.	10.223(a)(6)
G.	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.223(a)(7) 10.223(a)(8)
H.	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.223(a)(9)
I.	Textile luggage assembled from U.S. formed and cut fabric from U.S. yarns.	10.223(a)(10)
J.	Textile luggage cut and assembled from U.S. fabric from U.S. yarn.	10.223(a)(11)
K.	Knit apparel assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(12)
L.	Apparel assembled with U.S. thread from (1) U.S. fabric cut in the United States and the region, or (2) components knit-to-shape in the United States and the region, or (3) a combination of cutting and knitting-to-shape in the United States or the region.	10.223(a)(13)

6. U.S./Caribbean Fabric Producer Name & Address:	7. U.S./Caribbean Yarn Producer Name & Address:
	8. U.S. Thread Producer Name & Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete 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 certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17: Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(12) Block 10 should be completed if the article described in block 5 incorporates a fabric or yarn described in preference group G and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see § 10.226(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires; and

(16) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000, as amended by T.D. 03–12, 68 FR 13833, Mar. 21, 2003]

§ 10.225 Filing of claim for preferential treatment.

(a) *Declaration*. In connection with a claim for preferential treatment for a textile or apparel article described in § 10.223, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.226(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.224 and that covers the article being imported.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties

that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.226 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.225 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.225(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.225(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.224(c)(15), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US $2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the CBTPA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name
_____

Title

Address

Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.224 through 10.226, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.227 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.225, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.226, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.225, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.223(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.224(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.223(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this

section justify the importer's claim for preferential treatment.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.228 Additional requirements for preferential treatment of brassieres.

(a) *Definitions*. When used in this section, the following terms have the meanings indicated:

(1) *Producer*. ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

(2) *Entity controlling production*. ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States*. ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost*. ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value*. ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and

finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year*. ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2000.

(7) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2002, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in §10.223(a)(6) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during the immediately preceding year was at least 85

percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under §10.225, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in §10.223(a)(6) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in §10.223(a)(6) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in §10.223(a)(6) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2002, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production which did not produce or control production of articles that were entered as articles described in §10.223(a)(6) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer is not required to prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples*. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the production standards specified in §10.223(a)(6) in the first year sends 50 percent of that production to CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in §10.223(a)(6); one of those shipments is entered under the HTSUS subheading that covers articles described in §10.223(a)(6), the second shipment is entered under the HTSUS subheading that covers articles described in §10.223(a)(12), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in §10.223(a)(6) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in §10.223(a)(6); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in §10.223(a)(6) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in §10.223(a)(6).

Example 4. An entity controlling production of articles that meet the description in §10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the production standards specified in §10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the

production of articles that were entered in the same year.

Example 6. A CBTPA beneficiary country producer's entire production of articles that meet the description in §10.223(a)(6) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in §10.223(a)(6), but the entered articles do not meet the requisite 85 percent standard until the third year; the entered articles fail to meet the 75 percent standard in the fourth year; and the entered articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 8. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in §10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable

75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

CARIBBEAN BASIN TRADE PARTNERSHIP ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.223(a)(6) and 10.228]

1. Year beginning date: October 1, _____
   Year ending date: September 30, _____

   Official U.S. Customs and Border Protection Use Only
   Assigned number: _____
   Assignment date: _____

2. Identity of preparer (producer or entity controlling production):
   Full name and address:

   Telephone number: _____
   Facsimile number: _____
   Importer identification number: _____

3. If the preparer is an entity controlling production, provide the following for each producer:
   Full name and address:

   Telephone number: _____
   Facsimile number: _____

4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.228(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.
7. Authorized signature:

   _____
   Date:

8. Name and title (print or type):

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under § 10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.223(a)(6) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory

should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination*. If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the FEDERAL REGISTER.

[CBP Dec. 04–40, 69 FR 69518, Nov. 30, 2004]

NON-TEXTILE ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

SOURCE: T.D. 00–68, 65 FR 59663, Oct. 5, 2000, unless otherwise noted.

§ 10.231 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Basin Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides for special preferential tariff treatment of certain non-textile articles that are otherwise excluded from duty-free treatment under the CBERA. The provisions of §§ 10.231–10.237 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential tariff treatment pursuant to CBERA section 213(b)(3).

[T.D. 00–68, 65 FR 59663, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000]

§ 10.232 Definitions.

When used in §§ 10.231 through 10.237, the following terms have the meanings indicated:

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

CBTPA originating good. ''CBTPA originating good'' means a good that meets the rules of origin for a good as set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter and as applied under § 10.233(b).

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential tariff treatment. ''Preferential tariff treatment'' when used with reference to an imported article means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States with duty and other tariff treatment that is identical to the tariff treatment that would be accorded at that time under Annex 302.2 of the NAFTA to an imported article described in the same 8-digit subheading of the HTSUS that is a good of Mexico.

[T.D. 00–68, 65 FR 59663, Oct. 5, 2000; 65 FR 67264, Nov. 9, 2000]

§ 10.233 Articles eligible for preferential tariff treatment.

(a) *General*. The preferential tariff treatment referred to in § 10.231 applies to any of the following articles, provided that the article in question is a CBTPA originating good, is imported directly into the customs territory of the United States from a CBTPA beneficiary country, and is not accorded duty-free treatment under U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS (see § 10.26):

(1) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(2) Tuna, prepared or preserved in any manner, in airtight containers;

(3) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(4) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(5) Articles to which reduced rates of duty apply under § 10.198a, except as otherwise provided in paragraph (c) of this section.

(b) *Application of NAFTA rules of origin.* In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 12 of the HTSUS and the appendix to part 181 of this chapter will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(2) Any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(3) Any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and

(4) Any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination involving the United States and CBTPA beneficiary countries).

(c) *Duty reductions for leather-related articles.* If, after it is determined that an article described in paragraph (a)(5) of this section qualifies as a CBTPA originating good and is eligible for preferential tariff treatment under this section, it is determined that the article in question also would otherwise qualify for a reduced rate of duty under § 10.198a and that reduced rate of duty is lower than the rate of duty that would apply under this section, that lower rate of duty will apply to the article for purposes of preferential tariff treatment under this section.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.234 Certificate of Origin.

A Certificate of Origin as specified in § 10.236 must be employed to certify that an article described in § 10.233(a)(1) through (5) being exported from a CBTPA beneficiary country to the United States qualifies for the preferential tariff treatment referred to in § 10.231. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country. Where the CBTPA beneficiary country exporter is

not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential tariff treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.235 Filing of claim for preferential tariff treatment.

(a) *Declaration*. In connection with a claim for preferential tariff treatment for an article described in § 10.233(a)(1) through (5), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''R'' as a prefix to the subheading of the HTSUS under which the article in question is classified. Except in any of the circumstances described in § 10.236(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.236 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records*. Each importer claiming preferential tariff treatment for an article under § 10.235 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.235(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate*. An importer who claims preferential tariff treatment on an article under § 10.235(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be on CBP Form 450, including privately-printed copies of that Form, or, as an alternative to CBP Form 450, in an approved computerized format or other medium or format as is approved by the Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. An alternative format must contain the same information and certification set forth on CBP Form 450;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified period, not to exceed 12 months, set out in the Certificate by the exporter.

(c) *Correction and nonacceptance of Certificate*. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period

referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General*. Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential tariff treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the CBTPA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.234 through 10.236, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential tariff treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.237 Verification and justification of claim for preferential tariff treatment.

(a) *Verification by Customs*. A claim for preferential tariff treatment made under § 10.235, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.236, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential tariff treatment. A verification of a claim for preferential tariff treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential tariff treatment under § 10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that

support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter. A properly completed Certificate of Origin in the form prescribed in § 10.236(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.233(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential tariff treatment.

Subpart F—Andean Trade Promotion and Drug Eradication Act

APPAREL AND OTHER TEXTILE ARTICLES UNDER THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

SOURCE: Sections 10.241 through 10.248 issued by CBP Dec. 06–21, 71 FR 44574, Aug. 7, 2006, unless otherwise noted.

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. ''Assembled'' and ''sewn or otherwise assembled'' when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

ATPA. ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. ''Chief value'' when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any

other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. ''Cut'' when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign origin. ''Foreign origin'' means, in the case of a finding or trimming of non-textile materials, that the finding or trimming is a product of a country other than the United States or a ATPDEA beneficiary country and, in the case of a finding, trimming, or interlining of textile materials, that the finding, trimming, or interlining does not meet all of the U.S. and ATPDEA beneficiary country production requirements for yarns, fabrics, and/or components specified under § 10.243(a) for the article in which it is incorporated.

HTSUS. ''HTSUS''means the Harmonized Tariff Schedule of the United States.

Knit-to-Shape Components. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape.''

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Self-start edge. ''Self-start edge'' when used with reference to knit-to-shape components means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine.

Wholly formed fabric components. ''Wholly formed,'' when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving,

knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the FEDERAL REGISTER as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United

States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings

and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The ex-factory price of the components, findings and trimmings, or interlinings as set out in the invoice or other commercial documents, or, if the price is other than ex-factory, the price as set out in the invoice or other commercial documents adjusted to arrive at an ex-factory price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit.

(iii) *Treatment of yarns as findings or trimmings.* If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent in the format

specified in paragraph (b) of this section. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate of Origin on the basis of:

(1) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

(b) *Form of Certificate*. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name & Address:

2. Producer Name & Address:

3. Importer Name & Address:

4. Description of Article:

5. Preference Group:

Group ...	Each Description Below Is Only a Summary of the Cited CFR Provision.	19 CFR
A	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i).
B	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii).
C	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA.	10.243(a)(1)(iii).
D	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv).
E	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2).
F	Handloomed, handmade, or folklore textile and apparel goods	10.243(a)(3).
G	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries.	10.243(a)(4).
H	Textile luggage assembled from U.S. formed fabrics from U.S. yarns.	10.243(a)(5)&(6).
I	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7).

6. U.S./Andean Fabric Producer Name & Address:

7. U.S./Andean Yarn Producer Name & Address:

8. Handloomed, Handmade, or Folklore Article:

9. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete 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 certificate.

10. Authorized Signature:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN—Continued

11. Company:
12. Name: (Print or Type)
13. Title:
14. Date: (DD/MM/YY)
15. Blanket Period: From: To:
16. Telephone: Facsimile:

(c) *Preparation of Certificate*. The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs and Border Protection (CBP) upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover

multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.245 Filing of claim for preferential treatment.

(a) *Declaration*. In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the CBP port where the declaration was originally filed.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records*. Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate*. An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by CBP for that purpose;

(2) If in writing, must be signed by the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to CBP upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate*. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer

will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General*. Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP*. A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to CBP under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from CBP, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brassieres.

(a) *Definitions*. When used in this section, the following terms have the meanings indicated:

(1) *Producer*. ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production*. ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States*. ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost*. ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value*. ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: All reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year*. ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General*. For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in §10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples*. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in §10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in §10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in §10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in §10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in §10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in §10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in §10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been

met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips for use as brassiere straps and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the labels is to be disregarded entirely because the labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare

a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance*. In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance*. If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form*. The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.243(a)(4) and 10.248]

1. Year beginning date: October 1, _____ Year ending date: September 30, _____	Official U.S. CBP Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT DECLARATION OF COMPLIANCE FOR BRASSIERES—Continued

[19 CFR 10.243(a)(4) and 10.248]

	Importer identification number:_____
3. If the preparer is an entity controlling production, provide the following for each producer:	
Full name and address: _____	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature:_____	8. Name and title (print or type):_____
Date:	

(ii) *Preparation*. The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see §24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance*. The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure*. A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under §10.245 that is based on that declaration. A verification of a declaration of

compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in §10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under §10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination*. If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the FEDERAL REGISTER.

EXTENSION OF ATPA BENEFITS TO TUNA AND CERTAIN OTHER NON-TEXTILE ARTICLES

SOURCE: Sections 10.251 through 10.257 issued by T.D. 03–16, 68 FR 14497, Mar. 25, 2003; 68 FR 67349, Dec. 1, 2003, unless otherwise noted.

§ 10.251 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to ATPA beneficiary countries that have been designated as ATPDEA beneficiary countries. Sections 204(b)(1) and (b)(4) of the ATPA (19 U.S.C. 3203(b)(1) and (b)(4)) provide for the preferential treatment of certain non-textile articles that were not entitled to duty-free treatment under the ATPA prior to enactment of the ATPDEA. The provisions of §§10.251–10.257 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA sections 204(b)(1) and (b)(4).

§ 10.252 Definitions.

When used in §§10.251 through 10.257, the following terms have the meanings indicated:

ATPA. ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of products under 19 U.S.C. 3203(b)(1) and (b)(4) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

ATPDEA beneficiary country vessel. ''ATPDEA beneficiary country vessel'' means a vessel:

(a) Which is registered or recorded in an ATPDEA beneficiary country;

(b) Which sails under the flag of an ATPDEA beneficiary country;

(c) Which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(d) Of which the master and officers are nationals of an ATPDEA beneficiary country; and

(e) Of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions in the case of tuna described in § 10.253(a)(1) and free of duty in the case of any article described in § 10.253(a)(2).

United States vessel. ''United States vessel'' means either: a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code; or a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988.

[T.D. 03–16, 68 FR 14497, Mar. 25, 2003; 68 FR 67349, Dec. 1, 2003, as amended by CBP Dec. 06–21, 71 FR 44583, Aug. 7, 2006]

§ 10.253 Articles eligible for preferential treatment.

(a) *General.* Preferential treatment applies to any of the following articles, provided that the article in question is imported directly into the customs territory of the United States from an ATPDEA beneficiary country within the meaning of paragraph (b) of this section:

(1) Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each; and

(2) Any of the following articles that the President has determined are not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the article in question meets the country of origin and value content requirements set forth in paragraphs (c) and (d) of this section:

(i) Footwear not designated on December 4, 1991, as eligible articles for the purpose of the Generalized System of Preferences (GSP) under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(ii) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(iii) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(iv) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

(b) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

(c) *Country of origin criteria*—(1) *General.* Except as otherwise provided in paragraph (c)(2) of this section, an article described in paragraph (a)(2) of this section may be eligible for preferential treatment if the article is either:

(i) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country; or

(ii) A new or different article of commerce which has been grown, produced, or manufactured in an ATPDEA beneficiary country.

(2) *Exceptions.* No article will be eligible for preferential treatment by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) will apply equally for purposes of this paragraph.

(d) *Value content requirement*—(1) *General.* An article may be eligible for preferential treatment only if the sum of the cost or value of the materials produced in an ATPDEA beneficiary country or countries, plus the direct costs of processing operations performed in an ATPDEA beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For the specific purpose of determining the percentage referred to in paragraph (d)(1) of this section, the term ''ATPDEA beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1). Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from an ATPDEA beneficiary country as defined in § 10.252.

(3) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (d)(1) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(4)(i) of this section will apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(4) *Cost or value of materials*—(i) *''Materials produced in an ATPDEA beneficiary country or countries'' defined.* For

purposes of paragraph (d)(1) of this section, the words ''materials produced in an ATPDEA beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(A) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country or two or more ATPDEA beneficiary countries; or

(B) Substantially transformed in any ATPDEA beneficiary country or two or more ATPDEA beneficiary countries into a new or different article of commerce which is then used in any ATPDEA beneficiary country as defined in § 10.252 in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(4)(i)(B), no material will be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a), and the principles and examples set forth in § 10.195(a)(2), will apply for purposes of the corresponding context under paragraph (d)(4)(i) of this section.

(ii) *Failure to establish origin.* If the importer fails to maintain adequate records to establish the origin of a material, that material may not be considered to have been grown, produced, or manufactured in an ATPDEA beneficiary country or in the customs territory of the United States for purposes of determining the percentage referred to in paragraph (d)(1) of this section.

(iii) *Determination of cost or value of materials.* (A) The cost or value of materials produced in an ATPDEA beneficiary country or countries or in the customs territory of the United States 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 any ATPDEA beneficiary country or by the United States, 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 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.

(5) *Direct costs of processing operations*—(i) *Items included.* For purposes of paragraph (d)(1) 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 merchandise under consideration. Those costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

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

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

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

(D) Costs of inspecting and testing the specific merchandise.

(ii) *Items not included.* For purposes of paragraph (d)(1) of this section, the words ''direct costs of processing operations'' do not include items which are

not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(A) Profit; and

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

(6) *Articles wholly the growth, product, or manufacture of an ATPDEA beneficiary country.* Any article which is wholly the growth, product, or manufacture of an ATPDEA beneficiary country as defined in § 10.252, and any article produced or manufactured in an ATPDEA beneficiary country as defined in § 10.252 exclusively from materials which are wholly the growth, product, or manufacture of an ATPDEA beneficiary country or countries, will normally be presumed to meet the requirement set forth in paragraph (d)(1) of this section.

§ 10.254 Certificate of Origin.

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate on the basis of:

(a) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

[CBP Dec. 06–21, 71 FR 44583, Aug. 7, 2006]

§ 10.255 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an article described in § 10.253(a), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''J+'' as a prefix to the subheading of the HTSUS in which the article in question is classified. Except in any of the circumstances described in § 10.256(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.256 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.255 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.255(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an article under § 10.255(a) must provide, at the request of the port director, a copy of the Certificate of

Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on CBP Form 449, including privately-printed copies of that Form, or, as an alternative to CBP Form 449, in an approved computerized format or other medium or format as is approved by the Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. An alternative format must contain the same information and certification set forth on CBP Form 449;

(2) Must be signed by the producer or exporter or by the producer's or exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph, ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate*. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General*. Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§10.254 through 10.256, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim

for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

[T.D. 03–16, 68 FR 14497, Mar. 25, 2003; 68 FR 67349, Dec. 1, 2003, as amended by CBP Dec. 06–21, 71 FR 44583, Aug. 7, 2006]

§ 10.257 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.255, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.256, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.255, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the country of origin and value content requirements set forth in § 10.253(c) and (d). A properly completed Certificate of Origin in the form prescribed in § 10.254(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.253(b)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

Subpart G—United States-Canada Free Trade Agreement

SOURCE: Sections 10.301 through 10.311 issued by T.D. 89–3, 53 FR 51766, Dec. 23, 1988, unless otherwise noted.

§ 10.301 Scope and applicability.

The provisions of §§ 10.302 through 10.311 of this part relate to the procedures for obtaining duty preferences on imported goods under the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851). The United States and Canada agreed to suspend operation of the Agreement with effect from January 1, 1994, to coincide with the entry into force of the North American Free Trade Agreement (see part 181 of this chapter) and, accordingly, the provisions of §§ 10.302 through 10.311 of this part apply only to goods imported from Canada that

were entered for consumption, or withdrawn from warehouse for consumption, during the period January 1, 1989, through December 31, 1993. In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to Article 407 of the Agreement.

[T.D. 96–35, 61 FR 19835, May 3, 1996]

§ 10.302 Eligibility criteria in general.

Subject to the more specific explanations of the criteria in §§ 10.303 and 10.305 of this part, goods classifiable under an HTSUS heading or subheading for which the symbol ''CA'' appears in the ''special'' column are eligible for a preference if:

(a) *Originating goods*. The goods originate in Canada or the United States, or both, and

(b) *Direct shipment required*. Except as provided in § 10.306(b), are directly shipped to the United States from Canada.

§ 10.303 Originating goods.

(a) *General*. For purposes of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(1) *Wholly of Canadian or United States origin*. The goods are wholly obtained or produced in the Territory of Canada or the United States, or both, as set forth in General Note 3(c), HTSUS;

(2) *Transformed with a change in classification*. The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c), HTSUS; or

(3) *Transformed without a change in classification*. An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS, or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(i) The value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in § 10.305 constitute not less than 50 percent of the value of the goods when exported to the United States;

(ii) The assembled goods are not subsequently processed or further assembled in a third country; and

(iii) The goods satisfy the requirement in § 10.306.

(b) *Originating materials*. For purposes of this section and § 10.305, the term ''materials'' means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods, and the term ''orginating'' when used with reference to such materials means that the materials satisfy one of the criteria for originating goods set forth in paragraph (a) of this section.

(c) *Change in classification*. For purposes of paragraph (a) of this section, the expression ''change in classification'' means a change of classification within the Harmonized Commodity Description and Coding System (Harmonized System) as published and amended from time to time by the Customs Cooperation Council.

(d) *Articles of feather*. The goods are eligible to be treated as originating in Canada pursuant to General Note 3(c)(vii)(R)(12)(ee), HTSUS.

[T.D. 92–8, 57 FR 2453, Jan. 22, 1992]

§ 10.304 Exclusions.

(a) *Changes based on simple processing*. No goods shall be considered originating for purposes of eligibility under the Agreement if they have merely undergone simple packaging or simple combining operations, or have undergone mere dilution with water or with another substance that does not materially alter the characteristics of the goods.

(b) *Other excluded processing*. No goods shall be considered to be originating merely by virtue of having undergone any process or work in which the facts clearly justify the presumption that the sole object was to circumvent the provisions of Chapter 3 of the Agreement.

§ 10.305 Value content requirement.

(a) *Direct cost of processing or assembling*—(1) *Definition*. For purposes of applying a specific rule of origin under the Agreement which requires a value content determination, the terms ''direct cost of processing'' and ''direct cost of assembling'' mean the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(i) The cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(ii) The cost of inspecting and testing the goods;

(iii) The cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(iv) Development, design, and engineering costs;

(v) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(vi) Royalty, licensing, or other like payments for the right to the goods.

(2) *Exclusions from direct costs of processing or assembling*. Excluded from the direct costs of processing or assembling are:

(i) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) Brokerage charges relating to the importation and exportation of goods;

(iii) Costs for telephone, mail, and other means of communication;

(iv) Packing costs for exporting the goods;

(v) Royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; and

(vii) Profit on the goods.

(3) *Interpretation*—(i) *Indirect materials*. Under the definition of ''materials'' set forth in § 10.303(b), certain types of materials are treated as direct costs of processing or assembling under paragraph (a) of this section. This applies principally to materials used or consumed indirectly in the production of exported goods, where no portion of those materials is physically incorporated in the exported goods. In addition to the items specified in paragraph (a)(1)(iii) of this section, such materials include items such as gloves and safety glasses worn by production workers, tape used in painting processes, and tools, materials and spare parts used in the repair and maintenance of machinery and equipment used in the production of the exported goods. Such materials are to be distinguished from waste and spoilage specified in paragraph (b)(1)(ii)(C) of this section, which relate to materials that are physically incorporated in the exported goods.

(ii) *Directly incurred*. In order for costs incurred by a production facility to be treated as direct costs of processing or assembling, those costs must be directly incurred in the production of the exported goods and not merely associated with the production facility as peripheral costs necessary to operate the facility. In addition to the exclusions set forth in paragraph (a)(2) of this section, such peripheral costs include labor costs for nurses tending to employees, for accounting personnel involved in physical inventory taking, for personnel responsible for purchasing or requisitioning materials to be used or consumed in the production process, and for second level supervisors and above who are not directly involved in the production process.

(iii) *Labor costs*. Under paragraph (a)(1)(i) of this section, labor costs includable as direct costs of processing or assembling are limited to labor provided by the producer's employees or by independent contractors. Thus, for example, where processing operations are performed on components in the United States and those components are sold to a manufacturer in Canada

where they are incorporated in goods exported to the United States, the cost of those processing operations in the United States cannot be separately counted as a direct cost of processing attributable to the finished goods exported to the United States.

(iv) *Interest expense. Bona fide* interest payments on debt of any form, secured or unsecured, undertaken on arm's length terms in the ordinary course of business to finance the acquisition of fixed assets such as real property, a plant, and/or equipment used in the production of goods in the territory of Canada or the U.S. are includable in the direct cost of processing or direct cost of assembling. Interest will be treated as a direct cost of processing or assembling, but only that portion of the interest which is related to a fixed asset directly used in the production of the goods exported; thus, where an entire production facility is covered by a mortgage and incorporates both production and administrative or other general expense space, an appropriate allocation must be made in order to ensure that only that portion of the interest allocated to the production area is counted toward the value-content requirement. Interest expenses attributable to general and administrative costs or expenses, including interest on funds borrowed to meet the payroll of personnel directly involved in the production of goods, are not considered direct costs of processing or assembly.

(b) *Value of originating materials*—(1) *Definition*. The term ''value of materials originating in the United States or Canada or both'' means the aggregate of:

(i) The price paid by the producer of exported goods for materials originating in either the United States or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(ii) When not included in that price, the following costs related thereto:

(A) Freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (b)(1)(i) of this section to the location of the producer;

(B) Duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(C) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(D) The value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(2) *Directly attributable*. Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(3) *Interpretation*—(i) *Price paid*. As provided in paragraph (b)(1) of this section, the ''price paid'' for materials by the producer of exported goods forms the basis for determining the value of such materials when incorporated in the exported goods. The actual price paid for such materials will determine the value of those materials for purposes of the value-content requirement, even though a relationship between the producer and the seller of the materials may have influenced the price, except where the price did not include items specified in paragraph (b)(1)(ii) of this section that relate to the materials. The following examples will illustrate these principles. Notwithstanding these examples, the totality of the facts must be examined in each case to determine whether § 10.304(b) is applicable.

Example 1. Non-originating materials are sold by Company X (a foreign corporation located outside the United States or Canada) to Company Y (a Canadian corporation) for $100; Company X also sold identical materials to Company Z (a U.S. corporation) for $200 which was the price Company Z had paid to Company X for similar materials prior to implementation of the Agreement; and those non-originating materials sold by Company X to Company Y are then incorporated by Company Y into goods exported to the United States. In this case the $100 price paid

by Company Y to Company X constitutes the value of those materials for purposes of the value-content requirement.

Example 2. Company X purchased materials for $100, added a four percent mark-up to the price paid to defray purchasing expenses, and then sold the marked-up materials to Company Y (a Canadian corporation) which incorporated the materials in goods exported to the United States. In this case the $104 price paid by Company Y to Company X constitutes the value of the materials for purposes of the value-content requirement.

Example 3. Company X (a foreign corporation located outside the United States) sold non-originating materials to Company Y (a U.S. corporation) for $200, and Company Y then sold those materials for $100 to Company Z (a Canadian corporation) which incorporated the materials in goods which were imported into the United States by Company P (the U.S. parent company of Company Y). In this case, in accordance with paragraph (b)(1)(ii)(D) of this section, $100 would be added to the price paid by Company Z for purposes of the value-content requirement because the materials were sold at a reduced cost within the meaning of subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(ii) *Originating materials for which no price paid.* In cases involving a vertically integrated producer (that is, an entity which produces goods for export from materials which that producer has also made) a ''price paid'' for such originating materials normally does not exist. Even in the absence of a ''price paid'', such a vertically integrated producer may still claim the materials as originating materials for purposes of qualifying the finished goods exported to the United States as goods originating in Canada. However, under paragraph (b)(1)(i) of this section the value of those materials for purposes of applying the value-content requirement is limited to the price paid for those materials imported from the third country plus any costs added thereto under paragraph (b)(1)(ii) of this section. The following examples will illustrate these principles.

Example 1. If an automobile producer in the United States or Canada fabricates body panels wholly from third country steel coil, those body panels can qualify as originating materials without having to satisfy a value-content requirement because steel coil is classified in chapter 72 of the Harmonized System and body panels are classified in chapter 87 and the change in classification rules in chapter 87 do not incorporate a value-content requirement in this context. Thus, the producer can claim the body panels fabricated from the third country steel as originating materials for purposes of the value-content requirement applicable to the finished automobile which will be exported to the United States. The value of those originating materials is the price paid for the steel coil imported from the third country and used or consumed in the production of the body panels.

Example 2. An automobile exporter in Canada purchases and imports body panels fabricated in a third country in order to join them with vertically (locally) fabricated body panels to form an automobile body. If the body qualifies as an originating material, the exporter has two options. Under the first option, the exporter can claim the body as originating material, in which case the value of originating material is the price paid for the foreign body panels. Under the second option, the exporter may elect not to claim the body as originating material; but, rather, the exporter may claim as originating material any domestic steel coil used in producing the vertically (locally) fabricated body panels, in which case the value of originating material is the price paid for the domestic steel coil.

(c) *Value of goods when exported.* The term ''value of the goods when exported to the United States'' means the aggregate of:

(1) The price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) Freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) Duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs Trade; and

(2) The direct cost of processing or the direct cost of assembling the goods.

[T.D. 92–8, 57 FR 2453, Jan. 22, 1992; 57 FR 4793, Feb. 7, 1992, as amended by T.D. 92–98, 57 FR 46504, Oct. 9, 1992]

§ 10.306 Direct shipment to the United States.

Goods shall be considered as directly shipped to the United States from Canada for the purpose of eligibility for preferences under the Agreement only under the following circumstances:

(a) *Through shipment*. The goods have been shipped directly from Canada to the United States without passage through the territory of any third country; or

(b) *Shipment through a third country*. The goods were shipped through the territory of a third country but:

(1) The goods did not enter the commerce of any third country;

(2) The goods did not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the United States or to preserve them in good condition; and

(3) All shipping and export documents show the United States as the final destination.

§ 10.307 Documentation.

(a) *Claims for a preference*. A preference in accordance with the Agreement may be claimed by including on the entry summary, or equivalent documentation, the symbol ''CA'' as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference*. Failure to make a timely claim for a preference under the Agreement will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin*. A claim for a preference under the Agreement shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed and shall be presented to the port director upon request.

(d) *Exporter's Certificate of Origin*—(1) *General*. The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, DC 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(2) *Blanket certifications*. A blanket Exporter's Certificate of Origin, not to exceed a period of 12 months, issued for goods claimed as originating goods under the Agreement, can only be used if the certifying exporter is able to verify that the goods in each shipment to be covered by the blanket certification actually qualify for treatment under the Agreement. A blanket certification does not allow an exporter to average its costs over the blanket certification period in order to establish that the exported goods meet the criteria for originating goods under the Agreement. Under § 10.308, the exporter must retain supporting records that will permit a review of the eligibility of the goods in each shipment covered by a blanket certification.

(e) *Exceptions to documentation requirements*. Exceptions to the foregoing documentation requirements may be authorized at the discretion of the port director in the following circumstances:

(1) *Exception for informal entries*. As set forth in paragraphs (e)(1) (i) and (ii) of this section, an Exporter's Certificate of Origin may be waived in connection with an entry entitled to informal entry procedures as authorized in §§ 143.21 and 143.22 of this chapter if:

(i) *Commercial goods which qualify for informal entry*. The invoice, or an appropriate Customs release document, for commercial goods which qualify both for informal entry and a preference must include the following statement, on the invoice or appropriate Customs document:

I hereby certify that the goods described herein are eligible for a preference based upon the rules of origin enumerated in the United States-Canada Free-Trade Agreement.

Check One:

( ) Manufacturer
( ) Supplier
( ) Exporter

Signature

Title
Date:

(ii) *Noncommercial goods which qualify for informal entry*. The importation of goods from Canada by a person for noncommercial use may be exempt from documentation requirements if the goods are legally marked ''Made in Canada'', or it can otherwise be shown that they are originating goods under the Agreement and there is no evidence to the contrary.

(2) *Waiver of evidence of direct shipment*. The port director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the goods, that the goods were, in fact, imported directly from Canada, and that they otherwise qualify for a preference in accordance with the Agreement.

[T.D. 89–3, 53 FR 51766, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2455, Jan. 22, 1992]

§ 10.308 Records retention.

(a) *Importer*. The importer of record shall retain the exporter's certificate of origin required by § 10.307(d) for a period of 5 years and it must be made available upon request by the appropriate Customs official.

(b) *Exporter*. Any person who exports, or who knowlingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection, such records (including certifications of origin or copies thereof), which pertain to such exportation for a period of 5 years from the date of exportation. In the event that the appropriate Customs official requests submission of the records, they shall be submitted directly to the requesting official.

§ 10.309 Verification of documentation.

Any evidence of country of origin or of direct shipment submitted in support of a preference under the Agreement shall be subject to such verification as the appropriate Customs official may deem necessary. If the U.S. importer or U.S. exporter or their agent does not provide the information requested by the appropriate Customs officer, the port director may refuse to grant the claim for preference, in addition to other available sanctions.

§ 10.310 Election to average for motor vehicles.

(a) *Election*. In determining whether a motor vehicle is originating for purposes of the preferences under the Agreement or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), a manufacturer may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles of the same class or sister vehicles which are assembled in the same plant as provided for in the Agreement. A manufacturer must declare its election to average before the importation of any vehicles produced within the identified 12-month period. The election to average is subject to the conditions and requirements set forth in §§ 10.310 and 10.311.

(b) *Effect of election*. An election to average shall be binding at the time of the first entry of vehicles for which the election has been made and shall remain binding for the plant for the entire period covered by the election. If a manufacturer's annual report, required by § 10.311, does not verify the claim that the vehicles are originating goods under the Agreement or Canadian articles under APTA, or if a manufacturer otherwise fails to comply with the reporting requirements, entries of the vehicles identified in the averaging declaration will be subject to liquidation in accordance with the rate of duty which would otherwise apply.

(c) *Election in lieu of certificate of origin*. In lieu of the Exporter's Certificate of Origin required in § 10.307(c), an importer of vehicles covered by an election to average under this section may have its claim for preference based on a copy of the declaration of election.

[T.D. 89–3, 53 FR 51766, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2455, Jan. 22, 1992]

§ 10.311 Documentation for election to average for motor vehicles.

A manufacturer who elects to average for motor vehicles shall submit a declaration of election to average, quarterly reports, and an annual report in the form and manner as follows:

(a) *Declaration of election.* A declaration of election to average, signed by an authorized company official, shall be submitted by the manufacturer to the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568 on CBP Form 355, Declaration of Election to Average.

(b) *Quarterly Report.* A quarterly report shall be submitted to the Office of International Trade, Regulatory Audit, at the above address, on CBP Form 356, Vehicle Cost Report (Quarterly), within 30 days after the end of each quarter. In lieu of the CBP Form 356, the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on the CBP Form 356. Negative quarterly reports are required.

(c) *Annual Report.* An annual report shall be submitted to the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568, on CBP Form 357, Vehicle Cost Report (Annual), within 90 days of the end of the financial year identified in the Election to Average, CBP Form 355. In lieu of the CBP Form 357, Vehicle Cost Report (Annual), the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on CBP Form 357.

Subpart H—United States-Chile Free Trade Agreement

SOURCE: CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, unless otherwise noted.

GENERAL PROVISIONS

§ 10.401 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Chile Free Trade Agreement (the US-CFTA) signed on June 6, 2003, and under the United States-Chile Free Trade Agreement Implementation Act (the Act; 117 Stat. 909). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US-CFTA and the Act are contained in parts 12, 24, 162, and 163 of this chapter.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76131, Dec. 20, 2006]

§ 10.402 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Certification.* ''Certification'' means, either when used by itself or in the expression ''certification of origin'', the certification established under article 4.13 of the US-CFTA, that a good qualifies as an originating good under the US-CFTA;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US–CFTA and to an exemption from the merchandise processing fee;

(d) *Customs authority.* ''Customs authority'' means the competent authority that is responsible under the law of

a Party for the administration of customs laws and regulations;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,* which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the US-CFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(h) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(i) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994,* which is part of the *WTO Agreement;*

(j) *Goods.* ''Goods'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

(k) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Identical goods.* ''Identical goods'' means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

(o) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of the United States or Chile but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Chile, including—

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(p) *Originating.* ''Originating'' means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures) of the US-CFTA;

(q) *Party.* ''Party'' means the United States or the Republic of Chile;

(r) *Person.* ''Person'' means a natural person or an enterprise;

(s) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable to an originating good under the US–CFTA, and an exemption from the merchandise processing fee.

(t) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(u) *Tariff preference level*. ''Tariff preference level'' means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment as if such goods were originating based on the goods meeting the production requirements set forth in § 10.421 of this subpart.

(v) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(w) *Territory*. ''Territory'' means:

(1) With respect to Chile, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(x) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76131, Dec. 20, 2006]

IMPORT REQUIREMENTS

§ 10.410 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration*. In connection with a claim for preferential tariff treatment for an originating good under the US-CFTA, including an exemption from the merchandise processing fee, the U.S. importer must make a written declaration that the good qualifies for such treatment. The written declaration is made by including on the entry summary, or equivalent documentation, the symbol ''CL'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via electronic interchange.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification or other information on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other statement either in writing or via an authorized electronic data interchange system to the CBP office where the original declaration was filed specifying the correction (*see* §§ 10.482 and 10.483 of this subpart).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76131, Dec. 20, 2006]

§ 10.411 Certification of origin or other information.

(a) *Contents*. An importer who claims preferential tariff treatment on a good must submit, at the request of the port director, a certification of origin or other information demonstrating that the good qualifies as originating. A certification or other information submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good (if known);

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 26(n), HTSUS;

(vi) The preference criterion as set forth in paragraph (f) of this section.

(b) *Statement.* A certification submitted to CBP under paragraph (a) of this section must include a statement, in substantially the following form:

''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 certification was given of any changes that could affect the accuracy or validity of this certification; and

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-Chile 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 document consists of ____ pages, including all attachments.''

(c) *Responsible official or agent.* A certification submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; or producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. The certification must include the legal name and address of the responsible official or authorized agent signing the certification, and should include that person's telephone and e-mail address, if available. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

(1) A certification that the good qualifies as originating issued by the producer; or

(2) Knowledge of the exporter or importer that the good qualifies as an originating good.

(d) *Language.* The certification or other information submitted under paragraph (a) of this section must be completed either in the English or Spanish language. If the certification or other information is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certification or other information.

(e) *Applicability of certification.* A certification may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months. In the case of multiple shipments of identical goods, the certification must specify the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format.

(f) *Preference criteria.* The preference criterion to be included on the certification or other information as required in paragraph (a)(2)(vi) of this section is as follows:

(1) Preference criterion ''A'', refers to a good that is wholly obtained or produced entirely in the territory of Chile or of the United States, or both (see General Note 26(b)(i), HTSUS);

(2) Preference criterion ''B'', refers to a good that is produced entirely in the territory of Chile or the United States, or both (*see* General Note 26(b)(ii), HTSUS), and

(i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, or

(ii) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS;

(3) Preference criterion ''C'' refers to a good that is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials (see General Note 26(b)(iii), HTSUS).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.412 Importer obligations.

(a) *General*. An importer who makes a declaration under § 10.410(a) of this subpart is responsible for the truthfulness of the declaration and of all the information and data contained in the certification or other information submitted to CBP under § 10.411(a) of this subpart, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Compliance*. In order to make a claim for preferential treatment under § 10.410 of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rules of origin set forth in General Note 26, HTSUS, and in this subpart. Those records may include a properly completed certification or other information as set forth in § 10.411 of this subpart; and

(2) May be required to demonstrate that the conditions set forth in § 10.463 of this subpart were met if the imported article was shipped through an intermediate country.

(c) *Information provided by exporter or producer*. The fact that the importer has issued a certification based on information provided by the exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section. A U.S. importer who voluntarily makes a corrected declaration will not be subject to penalties for having made an incorrect declaration (*see* § 10.481 of this subpart).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006]

§ 10.413 Validity of certification.

A certification that is completed, signed and dated in accordance with the requirements listed in § 10.411 of this subpart will be accepted by CBP as valid for four years from the date on which the certification was signed. If the port director determines that a certification is illegible or defective or has not been completed in accordance with § 10.411 of this subpart, the importer will be given a period of not less than five business days to submit a corrected certification.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006]

§ 10.414 Certification or other information not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification or other information demonstrating that the good qualifies as originating under § 10.411(a) of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certification or other information demonstrating that the good qualifies as originating. The importer must submit such a certification or other information within 30 calendar days from the date of the written notice. Failure to timely submit the certification or other information will result in denial

of the claim for preferential tariff treatment.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006]

§ 10.415 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good imported into the United States must maintain, for five years after the date of importation of the good, a certification (or a copy thereof) or other information demonstrating that the good qualifies as originating, and any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and,

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Method of maintenance*. The records referred to in paragraph (a) of this section must be maintained by importers as provided in §163.5 of this chapter.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance*. If the importer fails to comply with any requirement under this subpart, including submission of a certification of origin or other information demonstrating that the good qualifies as originating under §10.411(a) of this subpart or submission of a corrected certification under §10.413 of this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in §10.463 of this subpart were met.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

TARIFF PREFERENCE LEVEL

§ 10.420 Filing of claim for tariff preference level.

A cotton or man-made fiber fabric or apparel good described in §10.421 of this subpart that does not qualify as an originating good under §10.451 of this subpart may nevertheless be entitled to preferential tariff treatment under the US-CFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 for a good described in §10.421(a) or (b) of this subpart or 9911.99.40 for a good described in §10.421(c) of this subpart) immediately above the applicable subheading in Chapter 52 through 62 of the HTSUS under which each non-originating cotton or man-made fiber fabric or apparel good is classified.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.421 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under §10.420 of this subpart:

(a) *Woven fabrics*. Certain woven fabrics of Chapters 52, 54 and 55 of the HTSUS (Headings 5208 to 5212; 5407 and 5408; 5512 to 5516) that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods, if they are wholly formed in the U.S. or Chile regardless of the origin of the yarn used to produce these fabrics.

(b) *Cotton or man-made fabric goods*. Certain cotton or man-made fabric

goods of Chapters 58 and 60 of the HTSUS that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods if they are wholly formed in the U.S. or Chile regardless of the origin of the fibers used to produce the spun yarn or the yarn used to produce the fabrics.[1]

(c) *Cotton or man-made apparel goods.* Cotton or man-made apparel goods in Chapters 61 and 62 of the HTSUS that are both cut (or knit-to-shape) and sewn or otherwise assembled in the U.S. or Chile regardless of the origin of the fabric or yarn, provided that they meet the applicable conditions for preferential tariff treatment under the US-CFTA, other than the condition that they are originating goods.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.422 Submission of certificate of eligibility.

(a) *Contents.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber fabric or apparel good must submit, at the request of the port director, a certificate of eligibility containing information demonstrating that the good satisfies the requirements for entry under the applicable TPL, as set forth in § 10.421 of this subpart. A certificate of eligibility submitted to CBP under this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good;

(ii) The legal name and address of the responsible official or authorized agent of the importer signing the certificate (if different from the importer of record), and that person's telephone and e-mail address, if available;

(iii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(vi) The HTSUS tariff classification of the good, to six or more digits, as well as the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 or 9911.99.40);

(vii) For a single shipment, the commercial invoice number;

(viii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''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 certificate, 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 certificate; and

The goods were produced in the territory of one or more of the parties, and comply with the preference requirements specified for those goods in the United States-Chile Free Trade Agreement and Chapter 99, subchapter XI of the HTSUS. There has been no further production or any other operation outside the territories of the parties, other

[1] The relevant HTSUS subheadings for fabric goods in Chapters 58 or 60 eligible under HTSUS 9911.99.20 are as follows: 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20.0020, 5802.30.0030, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30.0020, 5805.00.30, 5805.00.4010, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.2010, 5807.10.2020, 5807.90.05, 5807.90.2010, 5807.90.2020, 5808.10.40, 5808.10.70, 5808.90.0010, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, 6006.44.

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 document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent*. The certificate of eligibility required to be submitted under this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The certificate of eligibility must be completed either in the English or Spanish language. If the certificate is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certificate;

(d) *Applicability of certificate of eligibility*. A certificate of eligibility may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certificate.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.423 Certificate of eligibility not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certificate of eligibility for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing TPL claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certificate of eligibility. The importer must submit such a certificate within 30 calendar days from the date of the written notice. Failure to timely submit the certificate will result in denial of the claim for preferential tariff treatment.

§ 10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *Effect of noncompliance*. If the importer fails to comply with any requirement under this subpart, including submission of a certificate of eligibility under § 10.422 of this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.425 of this subpart were met.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *General*. A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other

process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

EXPORT REQUIREMENTS

§ 10.430 Export requirements.

(a) *Submission of certification to CBP.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must provide a copy of the certification (or such other medium or format approved by the Chile customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* An exporter or producer in the United States who has completed and signed a certification of origin, and who has reason to believe that the certification contains or is based on information that is not correct, must immediately after the date of discovery of the error notify in writing all persons to whom the certification was given by the exporter or producer of any change that could affect the accuracy or validity of the certification.

(c) *Maintenance of records*—(1) *General.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must maintain in the United States, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including records and documents associated with:

(i) The purchase of, cost of, value of, and payment for, the good;

(ii) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(iii) Where appropriate, the production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained in accordance with the Generally Accepted Accounting Principles applied in the country of production and in the case of exporters or producers in the United States must be maintained in the same manner as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the exporter's or producer's records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

§ 10.431 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(g) for failure to retain records required to be maintained under § 10.430.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.440 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.441 of this subpart. Subject to the provisions of

§ 10.416 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.442(c) of this part.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.441 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.440 of this subpart must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) Subject to § 10.413 of this subpart, a copy of a certification of origin or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.442 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.441 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under § 10.441 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.441 of this subpart, if the certification submitted under § 10.441(b)(2) of this subpart cannot be accepted as valid (see § 10.413 of this subpart), or if, following an origin verification under § 10.470 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.470 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be

denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

RULES OF ORIGIN

§ 10.450 Definitions.

For purposes of §§ 10.450 through 10.463 of this subpart:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation and the value of packing materials and containers for shipment as defined in § 10.450(m) of this subpart;

(b) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials*. ''Fungible goods or materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(d) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

(e) *Good*. ''Good'' means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties*. ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced on board factory ships from the goods referred to in paragraph (f)(5) provided such factory ships are registered or recorded with that Party and fly its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and

(11) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(10) of this section, or from their derivatives, at any stage of production;

(g) *Importer*. ''Importer'' means a person who imports goods into the territory of a Party;

(h) *Issued*. ''Issued'' means prepared by and, where required under a Party's domestic law or regulation, signed by the importer, exporter, or producer of the good;

(i) *Location of the producer*. ''Location of the producer'' means site of production of a good;

(j) *Material*. ''Material'' means a good that is used in the production of another good, including a part, ingredient, or indirect material;

(k) *Non-originating good*. ''Non-originating good'' means a good that does not qualify as originating under this subpart;

(l) *Non-originating material*. ''Non-originating material'' means a material that does not qualify as originating under this subpart;

(m) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production*. ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 4.18, US-CFTA;

(q) *Remanufactured goods*. ''Remanufactured goods'' means industrial goods assembled in the territory of a Party, listed in Annex 4.18, US-CFTA, that:

(1) Are entirely or partially comprised of recovered goods;

(2) Have the same life expectancy and meet the same performance standards as new goods; and

(3) Enjoy the same factory warranty as such new goods; and

(r) *Self-produced material*. ''Self-produced material'' means a material that is produced by the producer of a good and used in the production of that good; and

(s) *Value*. ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.451 Originating goods.

A good imported into the customs territory of the United States will be considered an originating good under the US-CFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of Chile or of the United States, or both; or

(b) The good is produced entirely in the territory of Chile or of the United States, or both, satisfies all other applicable requirements of this subpart, and

(1) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS; or

(c) The good is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials.

§ 10.452 Exclusions.

A good will not be considered to be an originating good and a material will not be considered to be an originating

material by virtue of having undergone:

(a) Simple combining or packaging operations; or

(b) Mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

§ 10.453 Treatment of textile and apparel sets.

Notwithstanding the specific rules specified in General Note 26(n), HTSUS, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be regarded as originating goods unless each of the goods in the set is an originating good or the non-originating goods in the set do not exceed 10 percent of the adjusted value of the set.

§ 10.454 Regional value content.

Where General Note 26, subdivision (n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good may be calculated, at the choice of the person claiming the tariff treatment authorized by this note for such good, on the basis of the build-down method or the build-up method described in this section, unless otherwise specified in the note.

(a) *Build-down method.* For the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV–VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials used by the producer in the production of the good; or

(b) *Build-up method.* For the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials used by the producer in the production of the good.

§ 10.455 Value of materials.

(a) *Calculating the regional value content.* For purposes of calculating the regional value content of a good under General Note 26(n), HTSUS, and for purposes of applying the *de minimis* (see § 10.459) provisions of subdivision (e) of the note, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material with respect to that importation;

(2) In the case of a material acquired in the territory where the good is produced, except for a material to which paragraph (a)(3) of this section applies, the producer's price actually paid or payable for the material;

(3) In the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of—

(i) All expenses incurred in the growth, production or manufacture of the material, including general expenses, and

(ii) A reasonable amount for profit; or

(4) In the case of a material that is self-produced, the sum of—

(i) All expenses incurred in the production of the material, including general expenses, and

(ii) A reasonable amount for profit.

(b) *Permissible additions to, and deductions from, the value of materials.* The value of materials may be adjusted as follows:

(1) For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) For non-originating materials, if included under paragraph (a) of this section, the following expenses may be

deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of Chile or of the United States.

(c) *Accounting method.* Any cost or value referenced in General Note 26(n), HTSUS, and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced (whether Chile or the United States).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.456 Accessories, spare parts or tools.

Accessories, spare parts or tools that form part of the good's standard accessories, spare parts or tools and are delivered with the good will be treated as a material used in the production of the good, if—

(a) The accessories, spare parts or tools are classified with and not invoiced separately from the good; and

(b) The quantities and value of the accessories, spare parts or tools are customary for the good.

§ 10.457 Fungible goods and materials.

(a) A person claiming preferential tariff treatment under the US-CFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term ''inventory management method'' means—

(1) Averaging,

(2) ''Last-in, first-out,''

(3) ''First-in, first-out,'' or

(4) Any other method that is recognized in the generally accepted accounting principles of the Party in which the production is performed (whether Chile or the United States) or otherwise accepted by that Party.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.458 Accumulation.

(a) Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party for purposes of determining the eligibility of the goods or materials for preferential tariff treatment under the US-CFTA.

(b) A good that is produced in the territory of Chile, the United States, or both, by one or more producers, will be considered as an originating good if the good satisfies the applicable requirements of § 10.451 and General Note 26, HTSUS.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.459 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 26(n), HTSUS, will nonetheless be considered to be an originating good if—

(1) The value of all non-originating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of such non-originating materials is included in calculating the

value of non-originating materials for any applicable regional value-content requirement under this note; and

(3) The good meets all other applicable requirements of General Note 26(n), HTSUS.

(b) Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(2) A non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the Harmonized System, that are used in the production of the following goods: infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the Harmonized System; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the Harmonized System; dairy preparations containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System; goods provided for in heading 2105 of the Harmonized System; beverages containing milk provided for in subheading 2202.90 of the Harmonized System; or animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the Harmonized System;

(3) A non-originating material provided for in heading 0805 of the Harmonized System or subheadings 2009.11 through 2009.30 of the Harmonized System that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 of the Harmonized System, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheadings 2106.90 or 2202.90 of the Harmonized System;

(4) A non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514, or 1515 of the Harmonized System;

(5) A non-originating material provided for in heading 1701 of the Harmonized System that is used in the production of a good provided for in headings 1701 through 1703 of the Harmonized System;

(6) A non-originating material provided for in Chapter 17 or in heading 1805 of the Harmonized System that is used in the production of a good provided for in subheading 1806.10 of the Harmonized System;

(7) A non-originating material provided for in headings 2203 through 2208 of the Harmonized System that is used in the production of a good provided for in heading 2207 or 2208 of the Harmonized System; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this section.

(c) A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System 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 General Note 26(n), HTSUS, 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 seven percent of the total weight of that component. 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. For purposes of this paragraph, if a good is a fiber, yarn or fabric, the component of the good that determines the tariff classification of the good is all of the fibers in the yarn, fabric or group of fibers.

§ 10.460 Indirect materials.

An indirect material, as defined in § 10.402(o), will be considered to be an originating material without regard to where it is produced.

Example. Chilean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.451(b)(1) and General Note 26(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.461 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the US-CFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 26(n), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Chilean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.455(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) × 100 (*see* § 10.454(a) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the United States importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.462 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS. Accordingly, such materials and containers do not have to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Chilean Producer A produces good C. Producer A ships good C to the United States in a shipping container which it purchased from Company B in Chile. The shipping container is originating. The value of the shipping container determined under section § 10.455(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method,

RVC = (VOM/AV) × 100 (*see* § 10.454(b)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100–$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.463 Transit and transshipment.

(a) *General*. A good will not be considered an originating good by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence*. An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.470 Verification and justification of claim for preferential treatment.

(a) *Verification*. A claim for preferential tariff treatment made under § 10.410 or § 10.442 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential tariff treatment. A verification of a claim for preferential treatment may involve, but is not limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, supporting accounting and financial records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence that documents the use of U.S. or Chilean materials in the production of the article subject to the verification, such as purchase orders, invoices, bills of lading and other shipping documents, customs import and clearance documents, and bills of material and inventory records.

(b) *Applicable accounting principles*. When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.471 Special rule for verifications in Chile of U.S. imports of textile and apparel products.

(a) *Procedures to determine whether a claim of origin is accurate*. For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by The Committee for the Implementation of Textile Agreements (CITA), which may include suspending the application of preferential treatment to the textile or apparel good for

which a claim of origin has been made. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good, if directed by CITA.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that a Chilean exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. CBP may undertake or assist in a verification under this paragraph by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by CITA, which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Chilean entity where the reasonable suspicion of unlawful activity relates to those goods. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to any textile or apparel goods exported or produced by the entity subject to the verification, if directed by CITA.

(c) *Assistance by CBP to Chilean authorities.* CBP may undertake or assist in a verification under this section by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States.

(d) *Treatment of documents and information provided to CBP.* Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Chile consistent with the laws, regulations, and procedures of Chile, will be considered confidential as provided for in Article 5.6 of the US-CFTA.

(e) *Notification to Chile.* Prior to commencing appropriate action under paragraph (a) or (b) of this section, CBP will notify the government of Chile. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

(f) *Retention of authority by CBP.* If CBP requests a verification before Chile fully implements its obligations under Article 3.21 of the US-CFTA, the verification will be conducted principally by CBP, including through means described in paragraphs (a) and (b) of this section. CBP retains the authority to exercise its rights under paragraphs (a) and (b) of this section.

§ 10.472 Verification in the United States of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* CBP will endeavor, at the request of the government of Chile, to conduct a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, Chile may take appropriate action with respect to the textile and apparel good subject to the

verification, and with respect to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of Chile*. CBP will endeavor to conduct a verification at the request of the government of Chile for purposes of enabling Chile to determine that the U.S. exporter or producer is complying with applicable customs laws, regulations, and procedures, if Chile has a reasonable suspicion that a U.S. exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, it may take action as permitted under its laws with respect to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) *Visits by CBP*. CBP may conduct visits to the premises of a U.S. exporter or producer or any other enterprise involved in the movement of textile or apparel goods from the United States to Chile in order to undertake or assist in a verification pursuant to paragraphs (a) and (b) of this section.

(d) *Initiation of verification by CBP*. CBP may conduct, on its own initiative, a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate.

(e) *Treatment of documents and information*. CBP will endeavor to provide to the government of Chile, consistent with U.S. laws, regulations, and procedures, production, trade, and transit documents and other information necessary to conduct a verification under paragraphs (a) and (b) of this section. Such information will be considered confidential as provided for in Article 5.6 of the US-CFTA.

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this subpart, that the good which is the subject of the verification does not qualify as an originating good, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based;

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in §§10.450 through 10.463 of this subpart, the legal basis for the determination; and

(d) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.474 Repeated false or unsupported preference claims.

Where verification or other information reveals indications of a pattern of conduct by an importer of false or unsupported representations that a good imported into the United States qualifies as originating, CBP may deny subsequent claims for preferential tariff treatment on identical goods imported by that person until compliance with the rules applicable to originating goods as set forth in General Note 26, HTSUS is established to the satisfaction of CBP.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

PENALTIES

§ 10.480 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the US-CFTA.

§ 10.481 Corrected declaration by importers.

A U.S. importer who makes a corrected declaration under § 10.410(b) will not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made.

§ 10.482 Corrected certifications of origin by exporters or producers.

Civil or administrative penalties provided for under the U.S. customs laws and regulations will not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 10.430(b) with respect to the making of an incorrect certification.

§ 10.483 Framework for correcting declarations and certifications.

(a) *''Voluntarily'' defined.* For purposes of this subpart, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(1) Done before the commencement of a formal investigation; or

(2) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(3) Done within 30 calendar days after either the U.S. importer, exporter or producer had reason to believe that the declaration or certification was not correct; and is

(4) Accompanied by a written statement setting forth the information specified in paragraph (c) of this section; and

(5) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) *Cases involving fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect declaration or certification may not make a voluntary correction. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(c) *Statement.* For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(2) In the case of a corrected declaration, identifies each affected import transaction, including each port of importation and the approximate date of each importation, and in the case of a notification of an incorrect certification, identifies each affected exportation transaction, including each port of exportation and the approximate date of each exportation. A U.S. producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(3) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional pertinent information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as CBP may permit in order for the

person to obtain the information or data.

(d) *Substantial compliance.* For purposes of this section, a person will be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (c) of this section, provided that:

(1) CBP is satisfied that the information was provided before the commencement of a formal investigation; and

(2) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (c) of this section.

(e) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration must tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and § 162.74 of this chapter.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.490 Goods re-entered after repair or alteration in Chile.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Chile as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Chile, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Chile, are incomplete for their intended use and for which the processing operation performed in Chile constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of § 10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Chile after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart I—United States-Singapore Free Trade Agreement

SOURCE: CBP Dec. 07–28, 72 FR 31995, June 11, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.501 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Singapore Free Trade Agreement (the SFTA) signed on May 6, 2003, and under the United States-Singapore Free Trade Agreement Implementation Act (the Act; 117 Stat. 948). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects

of the SFTA and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.502 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the SFTA to an originating good or other good specified in the SFTA, and to an exemption from the merchandise processing fee;

(b) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the SFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of the like domestic good or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law;

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered; or

(4) Duty imposed pursuant to Article 5 of the WTO Agreement on Agriculture.

(c) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(d) *Days.* ''Days'' means calendar days;

(e) *Enterprise.* ''Enterprise'' means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(f) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement*;

(g) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(h) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(i) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(j) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of the United States or Singapore but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Singapore, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(k) *Originating.* ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in SFTA Chapter Three (Rules of Origin) and General Note 25, HTSUS;

(l) *Party.* ''Party'' means the United States or the Republic of Singapore;

(m) *Person.* ''Person'' means a natural person or an enterprise;

(n) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the SFTA to an originating good, and an exemption from the merchandise processing fee;

(o) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(p) *Tariff preference level.* ''Tariff preference level'' means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the production requirements set forth in § 10.521 of this subpart;

(q) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(r) *Territory.* ''Territory'' means:

(1) With respect to Singapore, its land territory, internal waters and territorial sea as well as the maritime zones beyond the territorial sea, including the seabed and subsoil over which the Republic of Singapore exercises sovereign rights or jurisdiction under its national laws and international law for the purpose of exploration and exploitation of the natural resources of such areas; and

(2) With respect to the United States;

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(s) *WTO Agreement.* ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.510 Filing of claim for preferential tariff treatment upon importation.

(a) *Claim.* An importer may make a claim for SFTA preferential tariff treatment, including an exemption from the merchandise processing fee, based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good. For goods that qualify as originating goods under the Integrated Sourcing Initiative (*see* subdivisions (b)(ii) and (m) of General Note 25, HTSUS, and § 10.532 of this subpart), the claim is made by including on the entry summary, or equivalent documentation, the tariff item 9999.00.84, HTSUS, or by the method specified for equivalent reporting via an authorized electronic data interchange system. For all other qualifying goods, the claim is made by including on the entry summary, or equivalent documentation, the letters ''SG'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Corrected claim.* If, after making the claim required under paragraph (a) of this section, the importer becomes aware that the claim is invalid, the importer must promptly correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.561 and 10.562 of this subpart).

§ 10.511 Supporting statement.

(a) *Contents.* An importer who makes a claim under § 10.510(a) of this subpart must submit, at the request of the port director, a statement setting forth the reasons that the good qualifies as an originating good, including pertinent cost and manufacturing data. A statement submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the supporting statement (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone, and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone, and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(vi) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 25(o), HTSUS;

(vii) The applicable rule of origin set forth in General Note 25, HTSUS, under which the good qualifies as an originating good; and

(3) Must include a statement, in substantially the following form:

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 these representations;

The goods originated or are considered to have 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-Singapore 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 the goods in good condition or to transport the goods to the United States; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent.* The supporting statement required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The supporting statement required to be submitted under paragraph (a) of this section must be completed in the English language.

(d) *Applicability of supporting statement.* The supporting statement required to be submitted under paragraph (a) of this section may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the statement. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

§ 10.512 Importer obligations.

(a) *General.* An importer who makes a claim under § 10.510(a) of this subpart is responsible for the truthfulness of the claim and of all the information and data contained in the supporting statement provided for in § 10.511 of this subpart, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. However, an importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an invalid claim for preferential tariff treatment or submitting an incorrect supporting statement, provided that the importer promptly and voluntarily corrects the claim or supporting statement and pays any duty owing (*see* §§ 10.561 and 10.562 of this subpart). In instances in which CBP requests the submission of supporting documents, CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Compliance.* In order to make a claim for preferential tariff treatment under § 10.510(a) of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rules of origin set forth in General Note 25, HTSUS, and in this subpart. Those records may include a properly completed importer's supporting statement as set forth in § 10.511 of this subpart; and

(2) May be required to present evidence that the conditions set forth in § 10.542 of this subpart were met if the imported article was shipped through an intermediate country.

(c) *Information provided by exporter or producer*. The fact that the importer has made a claim or supporting statement based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in the first sentence of paragraph (a) of this section.

§ 10.513 Supporting statement not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a supporting statement under § 10.511 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the SFTA, the port director will notify the importer that for that importation the importer must submit to CBP a supporting statement. The importer must submit such a statement within 30 days from the date of the notice. Failure to timely submit the supporting statement will result in denial of the claim for preferential treatment.

§ 10.514 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.510(a) of this subpart must maintain, for five years after the date of importation of the good, any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Applicability of other recordkeeping requirements*. The records and documents referred to in paragraph (a) of this section are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(c) *Method of maintenance*. The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.515 Effect of noncompliance; failure to provide documentation regarding third country transportation.

(a) *Effect of noncompliance*. If the importer fails to comply with any requirement under this subpart, including submission of a complete supporting statement under § 10.511 of this subpart, when requested, the port director may deny preferential treatment to the imported good.

(b) *Failure to provide documentation regarding third country transportation*. Where the requirements for preferential treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to an originating good if the good is shipped through or transshipped in a country other than Singapore or the United States, and the importer of the good does not provide, at

the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.542 of this subpart were met.

TARIFF PREFERENCE LEVEL

§ 10.520 Filing of claim for tariff preference level.

A cotton or man-made fiber apparel good described in § 10.521 of this subpart that does not qualify as an originating good under § 10.531 of this subpart may nevertheless be entitled to preferential tariff treatment under the SFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable tariff item in Chapter 99 of the HTSUS (9910.61.01 through 9910.61.89) and the applicable subheading in Chapter 61 or 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified. For TPL goods, the letters ''SG'' must be inserted as a prefix to the applicable HTSUS 9910 tariff item when the entry is filed. The importer must also submit a certificate of eligibility as set forth in § 10.522 of this subpart.

§ 10.521 Goods eligible for tariff preference level claims.

Goods eligible for a TPL claim consist of cotton or man-made fiber apparel goods provided for in Chapters 61 and 62 of the HTSUS that are both cut (or knit-to-shape) and sewn or otherwise assembled in Singapore from fabric or yarn produced or obtained outside the territory of Singapore or the United States, and that meet the applicable conditions for preferential tariff treatment under the SFTA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 13, Subchapter X, Chapter 99, HTSUS.

§ 10.522 Submission of certificate of eligibility.

An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber apparel good must submit a certificate of eligibility issued by the Government of Singapore, demonstrating that the good is eligible for entry under the applicable TPL, as set forth in § 10.521 of this subpart.

RULES OF ORIGIN

§ 10.530 Definitions.

For purposes of §§ 10.530 through 10.542:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (j) of this section;

(b) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials.* ''Fungible goods or materials'' means goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical;

(d) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(e) *Good.* ''Good'' means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced exclusively from products referred to in subparagraph (f)(5) of this section on board factory ships registered or recorded with a Party and flying its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of one or both of the Parties from used goods; or

(11) Goods produced in one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(9) of this section or from the derivatives of such goods;

(g) *Material*. ''Material'' means a good that is used in the production of another good;

(h) *Non-originating good*. ''Non-originating good'' means a good that does not qualify as originating under General Note 25, HTSUS;

(i) *Non-originating material*. ''Non-originating material'' means a material that does not qualify as originating under General Note 25, HTSUS;

(j) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(k) *Producer*. ''Producer'' means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a good;

(l) *Production*. ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(m) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the following processes: Welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding, in order for such parts to be assembled with other parts, including other recovered parts, in the production of a remanufactured good as defined in paragraph (o) of this section;

(n) *Relationship*. ''Relationship'' means whether the buyer and seller are related parties in accordance with Article 15.4 of the Customs Valuation Agreement;

(o) *Remanufactured good*. ''Remanufactured good'' means an industrial good assembled in the territory of Singapore or the United States that is enumerated in Annex 3C, SFTA, and:

(1) Is entirely or partially comprised of recovered goods;

(2) Has the same life expectancy and meets the same performance standards as a new good; and

(3) Enjoys the same factory warranty as such a new good;

(p) *Self-produced material*. ''Self-produced material'' means a good, such as a part or ingredient, produced by the producer and used by the producer in the production of another good; and

(q) *Value*. ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.531 Originating goods.

Except as provided in § 10.543 of this subpart, a good imported into the customs territory of the United States will be considered an originating good under the SFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is transformed in one or both of the Parties so that:

(1) Each non-originating material undergoes an applicable change in tariff classification specified in General Note 25(o), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 25(o), HTSUS; or

(c) The good, in its condition as imported into the United States, is enumerated as an Integrated Sourcing Initiative good in General Note 25(m), HTSUS, and is imported from the territory of Singapore.

§ 10.532 Integrated Sourcing Initiative.

(a) For purposes of General Note 25(b)(ii), HTSUS, a good is eligible for treatment as an originating good under the Integrated Sourcing Initiative if:

(1) The good, in its condition as imported, is both classified in a tariff provision enumerated in the first column of General Note 25(m), HTSUS, and described opposite that tariff provision in the list of information technology articles set forth in the second column of General Note 25(m), HTSUS;

(2) The good, regardless of its origin, is imported into the territory of the United States from the territory of Singapore. If a product of a non-Party, the good must have been imported into Singapore prior to its importation into the territory of the United States; and

(3) The good satisfies the conditions and requirements of § 10.542 relating to third country transportation.

(b) A good enumerated in General Note 25(m), HTSUS, that is used in the production of another good in Singapore will not be considered an originating material for purposes of determining the eligibility for preferential tariff treatment of such other good unless:

(1) The good enumerated in General Note 25(m), HTSUS, satisfies an applicable rule of origin set out in General Note 25(o), HTSUS; or

(2) The good enumerated in General Note 25(m), HTSUS, is imported into the territory of Singapore from the territory of the United States prior to being used in the production of a good in Singapore.

§ 10.533 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 25(o), HTSUS, will nonetheless be considered to be an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in calculating the value of non-originating materials for any applicable regional value content requirement for the good under General Note 25(o), HTSUS; and

(3) The good meets all other applicable requirements of General Note 25, HTSUS.

(b) Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in one of the following HTSUS provisions: Subheading 1901.10, 1901.20 or 1901.90; heading 2105; or subheading 2106.90, 2202.90 or 2309.90;

(3) A non-originating material provided for in heading 0805, HTSUS, or subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in subheadings 2009.11 through 2009.39, HTSUS, or in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in Chapter 15, HTSUS, that is

used in the production of a good provided for in headings 1501 through 1508, 1512, 1514 or 1515, HTSUS;

(5) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in headings 1701 through 1703, HTSUS;

(6) A non-originating material provided for in Chapter 17, HTSUS, or heading 1805, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS;

(7) A non-originating material provided for in headings 2203 through 2208, HTSUS, that is used in the production of a good provided for in heading 2207 or 2208, HTSUS; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined.

(c) A textile or apparel good provided for in Chapters 50 through 63, HTSUS, 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 General Note 25(o), HTSUS, will nevertheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component. Notwithstanding the preceding sentence, a textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party.

§ 10.534 Accumulation.

(a) Originating materials of Singapore or the United States that are used in the production of a good in the territory of the other party will be considered to originate in the territory of the other party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers, will be considered an originating good if the good satisfies:

(1) The applicable requirements of § 10.531 of this subpart and General Note 25, HTSUS; or

(2) The provisions of § 10.532 of this subpart.

§ 10.535 Regional value content.

(a) *General*. Where General Note 25(o), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated, at the choice of the person claiming the preferential tariff treatment for such good, on the basis of the build-down method or the build-up method described in paragraphs (b) and (c) of this section, unless otherwise specified in General Note 25(o), HTSUS.

(b) *Build-down method*. Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good.

(c) *Build-up method*. Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM /AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

§ 10.536 Value of materials.

(a) *Calculating the value of materials*. Except as provided in § 10.541, for purposes of calculating the regional value content of a good under General Note 25(o), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.533 of this subpart) provisions of General Note 25(o), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where

the good is produced, except for a material to which paragraph (a)(3) of this section applies, the adjusted value of the material with reasonable modifications to the provisions of the Customs Valuation Agreement so as to permit their application to the domestic acquisition by the producer. Such reasonable modifications include, but are not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation; or

Example 1. The producer in Singapore purchases material x from an unrelated seller in Singapore for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Singapore ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Singapore by the seller (or by anyone else). So long as the producer acquired material x in Singapore, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Singapore at or about the same time the goods were sold to the producer in Singapore. Thus, if the seller of material x also sold an identical material to another buyer in Singapore without restrictions, that other sale would be used to determine the adjusted value of material x.

(3) In the case of a self-produced material, or in a case in which the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) A reasonable amount for profit.

(b) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products;

(iv) The cost of processing incurred in the territory of Singapore or the United States in the production of the non-originating material; and

(v) The cost of originating materials used in the production of the non-originating material in the territory of Singapore or the United States.

(c) *Accounting method.* Any cost or value referenced in General Note 25, HTSUS and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the country in which the good is produced (whether Singapore or the United States).

§ 10.537 Accessories, spare parts, or tools.

Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 25(o), HTSUS, provided that:

(a) The accessories, spare parts, or tools are not invoiced separately from the good;

(b) The quantities and value of the accessories, spare parts, or tools are customary for the good; and

(c) If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.535 of this subpart.

§ 10.538 Fungible goods and materials.

(a) A person claiming preferential treatment under the SFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

§ 10.539 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential treatment under the SFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 25(o), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Singaporean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.536(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC=((AV − VNM)/AV) × 100 (*see* § 10.535(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC=(VOM/AV) × 100 (*see* § 10.535(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

§ 10.540 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in § 10.530(j) of

this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 25(o), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in § 10.530(j) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Singaporean Producer A produces good C. Producer A ships good C to the U.S. in a shipping container which it purchased from Company B in Singapore. The shipping container is originating. The value of the shipping container determined under section § 10.536(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The United States importer decides to use the build-up method, RVC=(VOM/AV) × 100 (*see* § 10.535(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.541 Indirect materials.

An indirect material, as defined in § 10.502(j) of this subpart, will be considered to be an originating material without regard to where it is produced, and its value will be the cost registered in the accounting records of the producer of the good.

Example. Singaporean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.531(b)(1) of this subpart and General Note 25(o), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.542 Third country transportation.

(a) *General.* A good will not be considered an originating good by reason of having undergone production that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of the Parties. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.543 Certain apparel goods made from fabric or yarn not available in commercial quantities.

Notwithstanding the provisions of § 10.531 of this subpart, a textile apparel article of Chapter 61 or 62, HTSUS, will be considered an originating good under the SFTA if it is both cut (or knit to shape) and sewn or otherwise assembled in one or both of the Parties from fabric or yarn, regardless of origin, designated by the Committee for the Implementation of Textile Agreements (''CITA'') as not available in commercial quantities in a timely

manner in the United States. Such designations by CITA, identifying apparel goods made from such fabric or yarn as eligible for entry under subheading 9819.11.24 or 9820.11.27, HTSUS, must have been made by notices published in the FEDERAL REGISTER no later than November 15, 2002.[1] For purposes of this section, any reference in these notices to fabric or yarn formed in the United States will be interpreted as also including fabric or yarn formed in Singapore.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.550 Verification and justification of claim for preferential treatment.

(a) *Verification*. A claim for preferential treatment made under § 10.510(a) of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment may be conducted by means of one or more of the following:

(1) Requests for information from the importer;

(2) Written requests for information to the exporter or producer;

(3) Requests for the importer to arrange for the exporter or producer to provide information directly to CBP;

(4) Visits to the premises of the exporter or producer in Singapore, in accordance with procedures that the Parties adopt pertaining to verification; and

(5) Such other procedures as the Parties may agree.

(b) *Applicable accounting principles*. When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.551 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under § 10.550 of this subpart, CBP denies a claim for preferential treatment made under § 10.510(a) of this subpart, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 25, HTSUS, and in §§ 10.530 through 10.543 of this subpart, the legal basis for the determination.

§ 10.552 Information sharing by CBP regarding textile and apparel goods produced in the United States.

(a) *Documents or information in the possession of U.S. enterprises*. Upon written request from the Government of Singapore containing a brief statement of the matter at issue and the cooperation requested, CBP will promptly request from a U.S. enterprise and provide to the Government of Singapore, to the extent available, all correspondence, reports, bills of lading, invoices, order confirmations, and other documents or information relevant to circumvention that the Government of Singapore considers may have taken place.

(b) *Circumvention defined*. For purposes of this section and § 10.554 of this subpart, ''circumvention'' means providing a false claim or false information for the purpose of, or with the effect of, violating or evading existing customs, country of origin labeling, or trade laws of the Party into which the textile or apparel goods are imported, if such action results in the avoidance

[1] These designations are set forth in notices published in the FEDERAL REGISTER on September 25, 2001 (66 FR 49005), November 19, 2001 (66 FR 57942), April 10, 2002 (67 FR 17412), May 28, 2002 (67 FR 36858), and September 5, 2002 (67 FR 56806).

of tariffs, quotas, embargoes, prohibitions, restrictions, trade remedies, including antidumping or countervailing duties, or safeguard measures, or in obtaining preferential tariff treatment. Examples of circumvention include: Illegal transshipment; rerouting; fraud; false claims concerning country of origin, fiber content, quantities, description, or classification; falsification of documents; and smuggling.

§ 10.553 Textile and apparel site visits.

(a) *Visits to enterprises of Singapore.* U.S. officials may undertake to conduct site visits to enterprises in the territory of Singapore. U.S. officials will conduct such visits together with responsible officials of the Government of Singapore and in accordance with the laws of Singapore.

(b) *Denial of permission to visit.* If the responsible officials of an enterprise of Singapore that is proposed to be visited do not consent to the site visit, CBP will, if directed by The Committee for the Implementation of Textile Agreements (CITA), exclude from the territory of the United States textile or apparel goods produced or exported by the enterprise until CITA determines that the enterprise's production of, and capability to produce, such goods is consistent with statements by the enterprise that textile or apparel goods it produces or has produced are originating goods or products of Singapore.

§ 10.554 Exclusion of textile or apparel goods for intentional circumvention.

(a) *General.* If CITA finds that an enterprise of Singapore has knowingly or willfully engaged in circumvention, CBP will, if directed by CITA, exclude from the customs territory of the United States textile or apparel goods produced or exported by that enterprise for a period no longer than the applicable period described in paragraph (b) of this section.

(b) *Time periods.* An exclusion from entry imposed under paragraph (a) of this section will begin on the date a finding of knowing or willful circumvention is made by CITA and will remain in effect for the following applicable time period:

(1) With respect to a first finding, the applicable period is six months;

(2) With respect to a second finding, the applicable period is two years; or

(3) With respect to a third or subsequent finding, the applicable period is two years. If, at the time of a third or subsequent finding, an exclusion of goods with respect to an enterprise is in effect as a result of a previous finding, the two-year period applicable to the third or subsequent finding will begin on the day after the day on which the previous exclusion period terminates.

PENALTIES

§ 10.560 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the SFTA.

§ 10.561 Corrected claim or supporting statement.

An importer who makes a corrected claim under § 10.510(b) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or supporting statement, provided that the corrected claim is promptly and voluntarily made.

§ 10.562 Framework for correcting claims or supporting statements.

(a) *''Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or supporting statement will be deemed to have been done promptly and voluntarily if:

(1)(i) Done within one year following the date on which the importer made the incorrect claim; or

(ii) Done later than one year following the date on which the importer made the incorrect claim, provided that the corrected claim is made:

(A) Before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(B) Before any of the events specified in § 162.74(i) of this chapter has occurred; or

(C) Within 30 days after the importer initially becomes aware that the incorrect claim is not valid; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) Accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud*. An importer who acted fraudulently in making an incorrect claim may not make a voluntary correction of that claim. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims*. An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a)(1)(ii)(C) of this section.

(c) *Statement*. For purposes of this subpart, each corrected claim must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim relates;

(2) Identifies each affected import transaction, including each port of importation and the approximate date of each importation.

(3) Specifies the nature of the incorrect statements or omissions regarding the claim; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Substantial compliance*. For purposes of this section, a person will be deemed to have submitted the statement described in paragraph (c) of this section even though that person provided corrected information in a manner which does not conform to the requirements of the statement specified in paragraph (c) of this section, provided that the information submitted includes, orally or otherwise, substantially the same information as that specified in paragraph (c) of this section.

(e) *Tender of actual loss of duties*. A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) *Applicability of prior disclosure provisions*. Where a person fails to meet the requirements of this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and 162.74 of this chapter.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.570 Goods re-entered after repair or alteration in Singapore.

(a) *General*. This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Singapore as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Singapore, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration*. The

duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Singapore, are incomplete for their intended use and for which the processing operation performed in Singapore constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation*. The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Singapore after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart J—Dominican Republic—Central America—United States Free Trade Agreement

SOURCE: CBP Dec. 08-22, 73 FR 33678, June 13, 2008, unless otherwise noted.

GENERAL PROVISIONS

§ 10.581 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the Dominican Republic—Central America—United States Free Trade Agreement (the CAFTA–DR) signed on August 5, 2004, and under the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act; Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*), as amended by section 1634 of the Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 1167). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the CAFTA–DR and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.582 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the CAFTA–DR to an originating good or other good specified in the CAFTA–DR, and to an exemption from the merchandise processing fee;

(b) *Claim of origin*. ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Customs authority*. ''Customs authority'' means the competent governmental unit that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the CAFTA–DR, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(f) *Days*. ''Days'' means calendar days;

(g) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately owned

or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(i) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(j) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(k) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(l) *Identical goods*. ''Identical goods'' means goods that are produced in the same country and are the same in all respects, including physical characteristics, quality, and reputation, but excluding minor differences in appearance.

(m) *Indirect material*. ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of one or more of the Parties but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of one or more of the Parties, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

(n) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in CAFTA–DR Chapter Four (Rules of Origin and Origin Procedures) and General Note 29, HTSUS;

(o) *Party*. ''Party'' means:

(1) The United States; and

(2) Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, for such time as the CAFTA–DR is in force between the United States and that country;

(p) *Person*. ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the CAFTA–DR to an originating good or other good specified in the CAFTA–DR, and an exemption from the merchandise processing fee;

(r) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Tariff preference level*. ''Tariff preference level'' means a quantitative limit for certain non-originating apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in §§ 10.606 through 10.610 of this subpart.

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3.29 of the CAFTA–DR;

(u) *Territory*. ''Territory'' means:

(1) With respect to each Party other than the United States, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(v) *WTO*. ''WTO'' means the World Trade Organization; and

(w) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50698, Aug. 17, 2010]

IMPORT REQUIREMENTS

§ 10.583 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for CAFTA–DR preferential tariff treatment, including an exemption from the merchandise processing fee, based on:

(1) A certification, as specified in § 10.584 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good qualifies as an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letter ''P'' or ''P+'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.621 and 10.623 of this subpart).

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50699, Aug. 17, 2010]

§ 10.584 Certification.

(a) *General*. An importer who makes a claim under § 10.583(b) of this subpart based on a certification of the importer, exporter, or producer that the good qualifies as originating must submit, at the request of the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good, the exporter of the good (if different from the producer), and the producer of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 29(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 29, HTSUS, under which the good qualifies as an originating good; and

(4) Must include a statement, in substantially the following form:

''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 these representations;

The goods originated or are considered to have originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the Dominican Republic—Central America—United States 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 the goods in good condition or to transport the goods to the United States; the goods remained under the control of customs authorities while in the territory of a non-Party; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent*. The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The certification provided for in paragraph (a) of this section must be completed in either the English language or the language of the exporting Party. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer*. A certification may be prepared by the exporter or producer of the good on the basis of:

(1) The exporter's or producer's knowledge that the good is originating; or

(2) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(e) *Applicability of certification*. The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification*. A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was signed.

§ 10.585 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.583(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the CAFTA–DR;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.584 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties*. An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (see §§ 10.621 and 10.623 of this subpart).

§ 10.586 Certification not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.584 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.584 of this subpart, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.587 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.583(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the CAFTA–DR. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance*. The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.588 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General*. If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.584 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the CAFTA–DR, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.604(a) of this subpart were met.

EXPORT REQUIREMENTS

§ 10.589 Certification for goods exported to a Party.

(a) *Submission of certification to CBP*. Any person who completes and issues a certification for a good exported from the United States to a Party must provide a copy of the certification (or such other medium or format approved by the Party's customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification*. Any person who completes and issues a certification for a good exported from the United States to a Party and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.622 and 10.623 of this subpart).

(c) *Maintenance of records*—(1) *General*. Any person who completes and issues a certification for a good exported from the United States to a Party must maintain, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.590 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.591 of this subpart. Subject to the provisions of § 10.588 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.592(c) of this subpart.

§ 10.591 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a certification prepared in accordance with § 10.584 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.592 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.591 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.591 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.591 of this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry

is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.591 of this subpart.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.591 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §§ 10.588 and 10.591 of this subpart, or if, following an origin verification under § 10.616 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.616 of this subpart.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50699, Aug. 17, 2010]

RULES OF ORIGIN

§ 10.593 Definitions.

For purposes of §§ 10.593 through 10.605:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles*. ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, HTSUS, or motor vehicles provided for in subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material*. ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial

statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good*. ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of the Parties*. ''Goods wholly obtained or produced entirely in the territory of one or more of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or more of the Parties;

(2) Live animals born and raised in the territory of one or more of the Parties;

(3) Goods obtained in the territory of one or more of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or more of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6) of this section, if such factory ships are registered or recorded with a Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or more of the Parties; or

(ii) Used goods collected in the territory of one or more of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or more of the Parties from used goods, and used in the territory of a Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or more of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Material*. ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line*. ''Model line'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost*. ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs*. ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rates for comparable maturities of the Party in which the producer is located;

(l) *Non-originating good or non-originating material*. ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 29, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production*. ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate*. ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(q) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(r) *Remanufactured good.* ''Remanufactured good'' means a good that is classified in Chapter 84, 85, or 87, or heading 9026, 9031, or 9032, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

(s) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or more of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(t) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(u) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(v) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from

the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(w) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(x) *Used.* ''Used'' means used or consumed in the production of goods; and

(y) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50699, Aug. 17, 2010]

§ 10.594 Originating goods.

Except as otherwise provided in this subpart and General Note 29(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the CAFTA-DR only if:

(a) The good is wholly obtained or produced entirely in the territory of one or more of the Parties;

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

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 29(n), HTSUS, and the good satisfies all other applicable requirements of General Note 29, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 29(n), HTSUS, and satisfies all other applicable requirements of General Note 29, HTSUS; or

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

§ 10.595 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 29(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula $RVC = ((AV - VNM)/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula $RVC = (VOM/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 29(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or headings 8701 through 8708, HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC–VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or more Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i) or (d)(4)(ii) for automotive goods that are exported to the territory of one or more Parties.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use

that method for that category of automotive goods throughout the fiscal year.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50699, Aug. 17, 2010]

§ 10.596 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.603, for purposes of calculating the regional value content of a good under General Note 29(n), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.598 of this subpart) provisions of General Note 29(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in El Salvador purchases material x from an unrelated seller in El Salvador for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in El Salvador ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into El Salvador by the seller (or by anyone else). So long as the producer acquired material x in El Salvador, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within El Salvador at or about the same time the goods were sold to the producer in El Salvador. Thus, if the seller of material x also sold an identical material to another buyer in El Salvador without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this

section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or more of the Parties.

(d) *Accounting method*. Any cost or value referenced in General Note 29, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.597 Accumulation.

(a) Originating materials from the territory of one or more of the Parties that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or more of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.594 of this subpart and all other applicable requirements of General Note 29, HTSUS.

§ 10.598 De minimis.

(a) *General*. Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 29(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 29(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 29, HTSUS.

(b) *Exceptions*. Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; and

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS; and

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified

with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, that is used in the production of a good provided for in heading 1102 or 1103, HTSUS, or subheading 1904.90, HTSUS;

(6) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(7) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(8) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; and

(9) Except as provided in paragraphs (b)(1) through (b)(8) of this section and General Note 29(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or 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 General Note 29(n), HTSUS, will nevertheless be considered to be an originating good if:

(i) 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; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, ''wholly formed'' means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50699, Aug. 17, 2010]

§ 10.599 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.600 Accessories, spare parts, or tools.

(a) *General*. Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 29(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they appear specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(a) *Regional value content*. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.595 of this subpart.

EDITORIAL NOTE: At 73 FR 33678, June 13, 2008, subpart J to part 10 was added, and § 10.600 was added with two paragraphs (a).

§ 10.601 Retail packaging materials and containers.

(a) *Effect on tariff shift rule*. Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the CAFTA–DR is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 29(n), HTSUS.

(b) *Effect on regional value content calculation*. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Guatemalan Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.596(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) × 100 (*see* § 10.595(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) ×100 (*see* § 10.595(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

§ 10.602 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule*. Packing materials and containers for shipment, as defined in § 10.593(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 29(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation*. Packing materials and containers for shipment, as defined in § 10.593(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and

containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Producer A of the Dominican Republic produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in the Dominican Republic. The shipping container is originating. The value of the shipping container determined under section § 10.596(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The United States importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.595(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.603 Indirect materials.

An indirect material, as defined in § 10.582(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

Example. Honduran Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.594(b)(1) of this subpart and General Note 29(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.604 Transit and transshipment.

(a) *General*. A good that has undergone production necessary to qualify as an originating good under § 10.594 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence*. An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.605 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 29(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

TARIFF PREFERENCE LEVEL

§ 10.606 Filing of claim for tariff preference level.

Apparel goods of a Party described in § 10.607 of this subpart that do not qualify as originating goods under § 10.594 of this subpart may nevertheless be entitled to preferential tariff treatment under the CAFTA–DR under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or

equivalent documentation, the applicable subheading in Chapter 98 or 99 of the HTSUS immediately above the applicable subheading in Chapter 61 or 62 of the HTSUS under which each non-originating apparel good is classified. The applicable Chapter 98 and 99 subheadings are:

(a) Subheading 9822.05.11 or 9822.05.13 for goods described in § 10.607(a);

(b) Subheading 9915.61.01 for goods described in § 10.607(b) and (c);

(c) Subheading 9915.62.05 for goods described in § 10.607(d);

(d) Subheading 9915.62.15 for goods described in § 10.607(e); and

(e) Subheading 9915.61.03 or 9915.61.04 for goods described in § 10.607(f);

[CBP Dec. 10-26, 75 FR 50699, Aug. 17, 2010]

§ 10.607 Goods eligible for tariff preference level claims.

The following goods are eligible for a TPL claim filed under § 10.606 of this subpart:

(a) *Cumulation for certain woven apparel goods of a Party*. In accordance with General Note 29(d)(vii), HTSUS, for purposes of determining whether a good of Chapter 62, HTSUS, is an originating good, materials used in the production of the good produced in the territory of Mexico that would have been considered originating if produced in the territory of a Party, will be considered as having been produced in the territory of a Party. The applicable product-specific and chapter rules for Chapter 62, HTSUS, set forth in General Note 29, HTSUS, must be satisfied. The preferential tariff treatment is limited to the quantities specified in U.S. Note 21(b), Subchapter XXII, Chapter 98, HTSUS, except that the following goods made from wool fabric are not subject to these limits: men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers and vests and women's and girls' skirts, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of not over 18.5 microns. Subheading 9822.05.11, HTSUS, applies to the goods described above that are subject to quantitative limits while subheading 9822.05.13, HTSUS, applies to the goods described above that are not subject to such limits;

(b) *Cotton or man-made fiber apparel goods of Nicaragua*. Cotton or man-made fiber apparel goods described in U.S. Note 15(b), Subchapter XV, Chapter 99, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Nicaragua, and that meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 15(c), Subchapter XV, Chapter 99, HTSUS;

(c) *Men's wool sport coats of Nicaragua*. Men's sport coats described in U.S. Note 15(b), Subchapter XV, Chapter 99, HTSUS, provided that the component that determines the tariff classification of the good is of carded wool fabric of subheading 5111.11.70, 5111.19.60, or 5111.90.90, HTSUS, the goods are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Nicaragua, and the goods meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 15(c), Subchapter XV, Chapter 99, HTSUS;

(d) *Apparel goods of Costa Rica, not knitted or crocheted*. Apparel goods described in U.S. Note 16(b), Subchapter XV, Chapter 99, HTSUS, not knitted or crocheted, containing 36 percent or more by weight of wool or subject to wool restraints, provided that the goods are both cut and sewn or otherwise assembled in the territory of Costa Rica, meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods, and comply with the requirements set forth in chapter rules 1, 3, 4, and 5 for Chapter 62 of General Note 29, HTSUS. The preferential tariff treatment is limited to the quantities specified in U.S. Note 16(a), Subchapter XV, Chapter 99, HTSUS.;

(e) *Apparel goods of Costa Rica made from wool fabric*. Apparel goods described in U.S. Note 16(d), Subchapter XV, Chapter 99, HTSUS, made from fabric of wool (except fabric of carded wool or fabric made from wool yarn

having an average fiber diameter of less than or equal to 18.5 microns), provided that the goods are both cut and sewn or otherwise assembled in the territory of Costa Rica, and meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 16(c), Subchapter XV, Chapter 99, HTSUS; and

(f) *Mastectomy swimsuits of Costa Rica.* Women's knitted or crocheted swimwear, classified in subheading 6112.41.00 (of synthetic fibers) or 6112.49.00, HTSUS (of other textile fibers), specially designed to accommodate post-mastectomy breast prostheses, containing two full size interior pockets with side openings, two preformed cups, a supporting elastic band below the breast and vertical center stitching to separate the two pockets, provided that the goods are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Costa Rica, and meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. Subheading 9915.61.03, HTSUS, applies to the swimsuits described above classified in subheading 6112.41.00, HTSUS, while subheading 9915.61.04, HTSUS, applies to the swimsuits described above classified in subheading 6112.49.00, HTSUS. The preferential tariff treatment is limited to the quantities specified in U.S. Note 17(a), Subchapter XV, Chapter 99, HTSUS.

[CBP Dec. 10-26, 75 FR 50699, Aug. 17, 2010]

§ 10.608 Submission of certificate of eligibility for certain apparel goods of Nicaragua.

An importer who claims preferential tariff treatment on a non-originating apparel good of Nicaragua specified in paragraphs (b) and (c) of § 10.607 of this subpart must submit a certificate of eligibility issued by an authorized official of the Government of Nicaragua, demonstrating that the good is eligible for entry under the applicable TPL. The certificate of eligibility must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50700, Aug. 17, 2010]

§ 10.609 Transshipment of non-originating cotton or man-made fiber apparel goods.

(a) *General.* A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good:

(1) Undergoes production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with these requirements by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.610 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber apparel goods.

(a) *Effect of noncompliance.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff

treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.609(a) of this subpart were met.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.616 Verification and justification of claim for preferential tariff treatment.

(a) *Verification*. A claim for preferential tariff treatment made under § 10.583(b) or § 10.591 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under CAFTA–DR for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of the Party in which the good is produced, to review the records of the type referred to in § 10.589(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the United States and the exporting Party may agree.

(b) *Applicable accounting principles*. When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50700, Aug. 17, 2010]

§ 10.617 Special rule for verifications in a Party of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General*. For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of a Party conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification*. While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification*. On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a

verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of a Party conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

(d) *Assistance by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of a Party, along with the competent authorities of the Party, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from a Party to the United States.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50700, Aug. 17, 2010]

§ 10.618 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.583(b) of this subpart should be denied, it will issue a determination

in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 29, HTSUS, and in §§10.593 through 10.605 of this subpart, the legal basis for the determination.

§ 10.619 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the CAFTA–DR rules of origin set forth in General Note 29, HTSUS, CBP may suspend preferential tariff treatment under the CAFTA–DR to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 29, HTSUS.

PENALTIES

§ 10.620 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the CAFTA–DR.

§ 10.621 Corrected claim or certification by importers.

An importer who makes a corrected claim under §10.583(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.622 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to §10.589(b) with respect to the making of an incorrect certification.

§ 10.623 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily*'' *defined*. Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of §162.74(g) of this chapter; or

(ii) Done before any of the events specified in §162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud*. Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which are unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.624 Goods re-entered after repair or alteration in a Party.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in a Party as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in a Party, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to a Party, are incomplete for their intended use and for which the processing operation performed in the Party constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from a Party after having been exported for repairs or alterations and which are claimed to be duty free.

RETROACTIVE PREFERENTIAL TARIFF TREATMENT FOR TEXTILE AND APPAREL GOODS

§ 10.625 Refunds of excess customs duties.

(a) *Applicability.* Section 205 of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act, as amended by section 1634(d) of the Pension Protection Act of 2006, provides for the retroactive application of the Agreement and payment of refunds for any excess duties paid with respect to entries of textile and apparel goods of eligible CAFTA–DR countries that meet certain conditions and requirements. Those conditions and requirements are

set forth in paragraphs (b) and (c) of this section.

(b) *General*. Notwithstanding 19 U.S.C. 1514 or any other provision of law, and subject to paragraph (c) of this section, a textile or apparel good of an eligible CAFTA–DR country that was entered or withdrawn from warehouse for consumption on or after January 1, 2004, and before January 1, 2009, will be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and CBP will refund any excess customs duties paid with respect to such entry, with interest accrued from the date of entry, provided:

(1) The good would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; and

(2) Customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid.

(c) *Request for liquidation or reliquidation*. Liquidation or reliquidation may be made under paragraph (b) of this section with respect to an entry of a textile or apparel good of an eligible CAFTA–DR country only if a request for liquidation or reliquidation is filed with the CBP port where the entry was originally filed by April 1, 2009, and the request contains sufficient information to enable CBP:

(1) To locate the entry or to reconstruct the entry if it cannot be located; and

(2) To determine that the good satisfies the conditions set forth in paragraph (b) of this section.

(d) *Eligible CAFTA–DR country defined*. For purposes of this section, the term ''eligible CAFTA–DR country'' means a country that the United States Trade Representative has determined, by notice published in the FEDERAL REGISTER, to be an eligible country for purposes of section 205 of the Act.

[CBP Dec. 08-22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10-26, 75 FR 50700, Aug. 17, 2010]

Subpart K—United States-Jordan Free Trade Agreement

SOURCE: CBP Dec. 07–50, 72 FR 35156, June 27, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.701 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Jordan Free Trade Agreement (the US–JFTA) signed on October 24, 2000, and under the United States-Jordan Free Trade Area Implementation Act (the Act; 115 Stat. 243). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US–JFTA are contained in part 163 of this chapter.

§ 10.702 Definitions.

The following definitions apply for purposes of §§ 10.701 through 10.712:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US–JFTA;

(b) *Customs authority*. ''Customs authority'' means the competent authority that is responsible under the law of a country for the administration of customs laws and regulations;

(c) *Customs territory of the United States*. ''Customs territory of the United States'' means the 50 states, the District of Columbia, and Puerto Rico;

(d) *Days*. ''Days'' means calendar days unless otherwise specified;

(e) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States;

(f) *Good*. ''Good'' means any merchandise, product, article, or material;

(g) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by

the Parties in their respective tariff laws;

(h) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(i) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(j) *Material*. ''Material'' means a good that is used in the production of another good;

(k) *New or different article of commerce*. ''New or different article of commerce'' means a good that has been substantially transformed into a new and different article of commerce having a new name, character, or use distinct from the good or material from which it was so transformed;

(l) *Party*. ''Party'' means the United States or the Hashemite Kingdom of Jordan;

(m) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the US–JFTA;

(n) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(o) *Territory*. ''Territory'' means:

(1) With respect to Jordan, the land, maritime and air space under its sovereignty, and the exclusive economic zone within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(p) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(q) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994;

(r) *Wholly the growth, product, or manufacture of Jordan*. ''Wholly the growth, product, or manufacture of Jordan'' refers both to any good which has been entirely grown, produced, or manufactured in Jordan and to all materials incorporated in a good which have been entirely grown, produced, or manufactured in Jordan, as distinguished from goods or materials imported into Jordan from another country, whether or not such goods or materials were substantially transformed into new or different articles of commerce after their importation into Jordan.

IMPORT REQUIREMENTS

§ 10.703 Filing of claim for preferential tariff treatment.

An importer may make a claim for US–JFTA preferential tariff treatment by including on the entry summary, or equivalent documentation, the symbol ''JO'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.704 Declaration.

(a) *Contents*. An importer who claims preferential tariff treatment for a good under the US–JFTA must submit, at the request of the port director, a declaration setting forth all pertinent information concerning the production or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of

the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, quantity, numbers, and marks of packages, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the production of the good in Jordan and identification of the direct costs of processing operations;

(vii) A description of any materials used in the production of the good that are wholly the growth, product, or manufacture of Jordan or the United States, and a statement as to the cost or value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the good that are claimed to have been sufficiently processed in Jordan so as to be materials produced in Jordan; and

(ix) A description of the origin and cost or value of any foreign materials used in the good that have not been substantially transformed in Jordan.

(3) Must include a statement, in substantially the following form:

''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 these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Jordan Free Trade Agreement; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent*. The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The declaration must be completed in the English language.

(d) *Applicability of declaration*. The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

§ 10.705 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.703 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the US–JFTA:

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.704 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.706 Declaration not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section,

an importer will not be required to submit a declaration under § 10.704 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US–JFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.707 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.703 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.708 Effect of noncompliance; failure to provide documentation regarding third-country transportation.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.704 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding third country transportation.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in a country other than Jordan or the United States, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was ''imported directly'', as that term is defined in § 10.711(a) of this subpart.

RULES OF ORIGIN

§ 10.709 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a good imported directly from Jordan into the customs territory of the United States will be eligible for preferential tariff treatment under the US–JFTA only if:

(1) The good is either:

(i) Wholly the growth, product, or manufacture of Jordan; or

(ii) A new or different article of commerce that has been grown, produced, or manufactured in Jordan; and

(2) With respect to a good described in paragraph (a)(1)(ii) of this section, the good satisfies the value-content requirement specified in § 10.710 of this subpart.

(b) *Exceptions*—(1) *Combining, packaging, and diluting operations.* No good will be considered to meet the requirements of paragraph (a)(1) of this section by virtue of having merely undergone simple combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

(2) *Certain juices.* A good will not be considered to meet the requirements of paragraph (a)(1) of this section if the good:

(i) Is imported into Jordan, and, at the time of importation, would be classified in heading 0805, HTSUS; and

(ii) Is processed in Jordan into a good classified in any of subheadings 2009.11 through 2009.30, HTSUS.

(c) *Textile and apparel goods.* For purposes of determining whether a textile or apparel good meets the requirements of paragraph (a)(1) of this section, the provisions of § 102.21 of this chapter will apply.

§ 10.710 Value-content requirement.

(a) *General.* A good described in § 10.709(a)(1)(ii) may be eligible for preferential tariff treatment under the US–JFTA only if the sum of the cost or value of the materials produced in Jordan, plus the direct costs of processing operations performed in Jordan, is not less than 35 percent of the appraised value of the good at the time it is entered.

(b) *Materials produced in the United States.* For purposes of determining the percentage referred to paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the good at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States. A material is ''produced in the customs territory of the United States'' for purposes of this paragraph if it is either:

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

(2) Subject to the exceptions specified in § 10.709(b) of this subpart, substantially transformed in the United States into a new and different article of commerce that has a new name, character, or use, which is then used in Jordan in the production or manufacture of a new or different article of commerce that is imported into the United States. Except where the context otherwise requires, the examples set forth in § 10.196(a) of this part will apply for purposes of this paragraph.

(c) *Cost or value of materials*—(1) *Materials produced in Jordan defined.* For purposes of paragraph (a) of this section, the words ''materials produced in Jordan'' refer to those materials incorporated into a good that are either:

(i) Wholly the growth, product, or manufacture of Jordan; or

(ii) Subject to the exceptions specified in § 10.709(b) of this subpart, substantially transformed in Jordan into a new and different article of commerce that has a new name, character, or use, which is then used in Jordan in the production or manufacture of a new or different article of commerce that is imported into the United States. Except where the context otherwise requires, the examples set forth in § 10.196(a) of this part will apply for purposes of this paragraph.

(2) *Determination of cost or value of materials.* (i) Except as provided in paragraph (c)(2)(ii) of this section, the cost or value of materials produced in Jordan or in the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) 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;

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

(D) Taxes and/or duties imposed on the materials by a Party, provided they are not remitted upon exportation.

(ii) 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:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

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

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the port director may ascertain or estimate the value thereof using all reasonable ways and means at his or her disposal.

(d) *Direct costs of processing operations*—(1) *Items included.* For purposes of paragraph (a) 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 goods 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 goods:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific goods, 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 goods;

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

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

(2) *Items not included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the goods under consideration 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 goods or are not related to the growth, production, manufacture, or assembly of the goods, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

§ 10.711 Imported directly.

(a) *General.* To be eligible for preferential tariff treatment under the US–JFTA, a good must be imported directly from Jordan into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(1) Direct shipment from Jordan to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Jordan to the United States through the territory of an intermediate country, the goods in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination, the goods in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail, provided that the goods are imported as a result of the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the goods in good condition.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the US–JFTA may be required to demonstrate, to CBP's satisfaction, that the goods were ''imported directly'' as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS

§ 10.712 Verification of claim for preferential tariff treatment.

A claim for preferential tariff treatment made under § 10.703 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, or is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential tariff treatment.

Subpart L—United States-Australia Free Trade Agreement

SOURCE: CBP Dec. 15-03, 80 FR 7308, Feb. 10, 2015, unless otherwise noted.

GENERAL PROVISIONS

§ 10.721 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Australia Free Trade Agreement (the AFTA) signed on May 18, 2004, and under the United States-Australia Free Trade Agreement Implementation Act (''the Act''), Pub. L. 108–286, 118 Stat. 919 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the AFTA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.722 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the AFTA to an originating good, and to an exemption from the merchandise processing fee;

(b) *Claim of origin*. ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party or satisfies the non-preferential rules of origin of a Party;

(c) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of the like domestic good or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(d) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(e) *Days*. ''Days'' means calendar days;

(f) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(g) *Enterprise of a Party*. ''Enterprise of a Party'' means an enterprise constituted or organized under a Party's law;

(h) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the *WTO Agreement;*

(i) *Goods of a Party*. ''Goods of a Party'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties determine under the rules of origin as applied in the normal course of trade, and includes originating goods of a Party.

(j) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Identical goods*. ''Identical goods'' means goods that are the same in all

respects relevant to the rule of origin that qualifies the goods as originating goods;

(n) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in AFTA Chapters Four (Textiles and Apparel) and Five (Rules of Origin) and General Note 28, HTSUS;

(o) *Party*. ''Party'' means the United States or Australia;

(p) *Person*. ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the AFTA to an originating good, and an exemption from the merchandise processing fee;

(r) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Territory*. ''Territory'' means:

(1) With respect to Australia, the territory of the Commonwealth of Australia:

(i) Excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) Including Australia's territorial sea, contiguous zone, exclusive economic zone, and continental shelf; and

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(u) *WTO*. ''WTO'' means the World Trade Organization; and

(v) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.723 Filing of claim for preferential tariff treatment upon importation.

(a) *Claim*. An importer may make a claim for AFTA preferential tariff treatment, including an exemption from the merchandise processing fee, based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good. The claim is made by including on the entry summary, or equivalent documentation, the letters ''AU'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Corrected claim*. If, after making the claim required under paragraph (a) of this section, the importer becomes aware that the claim is invalid, the importer must promptly and voluntarily correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.746 and 10.747 of this subpart).

§ 10.724 Supporting statement.

(a) *Contents*. An importer who makes a claim under § 10.723(a) of this subpart must submit, at the request of the port director, a supporting statement setting forth the reasons that the good qualifies as an originating good, including pertinent cost and manufacturing data. A statement submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and email address of the importer of record of the good;

(ii) The legal name, address, telephone, and email address of the responsible official or authorized agent of the importer signing the supporting statement (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone, and email address of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone, and email address of the producer of the good, if known;

(v) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(vi) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 28(n), HTSUS;

(vii) The applicable rule of origin set forth in General Note 28, HTSUS, under which the good qualifies as an originating good; and

(3) Must include a statement, in substantially the following form:

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 these representations;

The goods originated or are considered to have 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-Australia 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 the goods in good condition or to transport the goods to the United States; and

This document consists of _____ pages, including all attachments.

(b) *Responsible official or agent.* The supporting statement required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The supporting statement required to be submitted under paragraph (a) of this section must be completed in the English language.

(d) *Applicability of supporting statement.* The supporting statement required to be submitted under paragraph (a) of this section may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the statement. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

§ 10.725 Importer obligations.

(a) *General.* An importer who makes a claim under § 10.723(a) of this subpart:

(1) Is responsible for the truthfulness of the claim and of all the information and data contained in the supporting statement provided for in § 10.724 of this subpart; and

(2) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. If CBP requests the submission of supporting documents, CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a supporting statement based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in the first sentence of paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C.

1592 for making an invalid claim for preferential tariff treatment or submitting an incorrect supporting statement, provided that the importer promptly and voluntarily corrects the claim or supporting statement and pays any duty owing (*see* §§ 10.746 and 10.747 of this subpart).

§ 10.726 Supporting statement not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a supporting statement under § 10.724 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the AFTA, the port director will notify the importer that for that importation the importer must submit to CBP a supporting statement. The importer must submit such a statement within 30 days from the date of the notice. Failure to timely submit the supporting statement will result in denial of the claim for preferential tariff treatment.

§ 10.727 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.723(a) of this subpart must maintain, for five years after the date of importation of the good, records and documents necessary to demonstrate that the good qualifies as an originating good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Applicability of other recordkeeping requirements*. The records and documents referred to in paragraph (a) of this section are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(c) *Method of maintenance*. The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.728 Effect of noncompliance; failure to provide documentation regarding third country transportation.

(a) *General*. If the importer fails to comply with any requirement under this subpart, including submission of a complete supporting statement prepared in accordance with § 10.724 of this subpart, when requested, the port director may deny preferential treatment to the imported good.

(b) *Failure to provide documentation regarding third country transportation*. Where the requirements for preferential treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the AFTA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.741 of this subpart were met.

RULES OF ORIGIN

§ 10.729 Definitions.

For purposes of §§ 10.729 through 10.741 of this subpart:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance

and related services incidental to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (n) of this section;

(b) *Class of motor vehicles.* ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS;

(2) Motor vehicles classified under subheading 8701.10 or under any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles provided for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS, or motor vehicles classified under subheading 8704.21 or 8704.31; or

(4) Motor vehicles classified under subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible goods or materials.* ''Fungible goods or materials'' means goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced exclusively from products referred to in paragraph (g)(5) of this section on board factory ships registered or recorded with a Party and flying its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of one or both of the Parties from goods that have passed their life expectancy, or are no longer useable due to defects, and utilized in the territory of one or both of the Parties in the production of remanufactured goods; or

(11) Goods produced in one or both of the Parties exclusively from goods referred to in paragraphs (g)(1) through (9) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or

the operation of equipment associated with the production of another good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other good that is not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production.

(i) *Material*. ''Material'' means a good that is used in the production of another good;

(j) *Model line*. ''Model line'' means a group of motor vehicles having the same platform or model name;

(k) *Net cost*. ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(l) *Non-allowable interest costs*. ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rates for comparable maturities of the United States or Australia;

(m) *Non-originating good or non-originating material*. ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 28, HTSUS, or this subpart;

(n) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(o) *Producer*. ''Producer'' means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a good;

(p) *Production*. ''Production'' means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(q) *Reasonably allocate*. ''Reasonably allocate'' means to apportion in a manner that would be appropriate under generally accepted accounting principles;

(r) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The complete disassembly of goods which have passed their life expectancy, or are no longer useable due to defects, into individual parts; and

(2) The cleaning, inspecting, or testing, or other processing that is necessary for improvement to sound working condition of such individual parts;

(s) *Remanufactured good*. ''Remanufactured good'' means an industrial good assembled in the territory of a Party that is classified in Chapter 84, 85, or 87, or heading 9026, 9031, or 9032, HTSUS, other than a good classified in heading 8418 or 8516 or any of headings 8701 through 8706, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(3) Enjoys a factory warranty similar to a like good that is new;

(t) *Royalties*. ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(u) *Sales promotion, marketing, and after-sales service costs*. ''Sales promotion, marketing, and after-sales

service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(v) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(w) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(x) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(y) *Used.* ''Used'' means used or consumed in the production of goods; and

(z) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.730 Originating goods.

Except as otherwise provided in this subpart and General Note 28, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the AFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 28(n), HTSUS;

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 28(n), HTSUS; or

(3) The good meets any other requirements specified in General Note 28(n), HTSUS;

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials; or

(d) The good otherwise qualifies as an originating good under General Note 28(n), HTSUS.

§ 10.731 Textile and apparel goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 28(n), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be 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 10 percent of the value of the set.

§ 10.732 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 28(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 28(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 28, HTSUS.

(b) Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in one of the following HTSUS provisions: subheading 1901.10, 1901.20 or 1901.90; heading 2105; or subheading 2106.90, 2202.90 or 2309.90;

(3) A non-originating material provided for in heading 0805, HTSUS, or subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in subheadings 2009.11 through 2009.39, HTSUS, or in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514 or 1515, HTSUS;

(5) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in headings 1701 through 1703, HTSUS;

(6) A non-originating material provided for in Chapter 17, HTSUS, or heading 1805, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS;

(7) A non-originating material provided for in headings 2203 through 2208, HTSUS, that is used in the production of a good provided for in heading 2207 or 2208, HTSUS; or

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined.

(c) A textile or apparel good provided for in Chapters 42, 50 through 63, 70, or 94, HTSUS, 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 General Note 28(n), HTSUS, will nevertheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component. Notwithstanding the preceding sentence, a textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the yarn, fabric, or group of fibers.

§ 10.733 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.730 of this subpart and all other applicable requirements of General Note 28, HTSUS.

§ 10.734 Regional value content.

(a) *General*. Except for goods to which paragraph (d) of this section applies, where General Note 28(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method*. Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method*. Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General*. Where General Note 28(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or any of headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the net cost methods described in paragraphs (d)(2) through (4) of this section.

(2) *Net cost method*. Under the net cost method, the regional value content must be calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all

such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of a Party.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (B) for automotive goods that are exported to the territory of a Party.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

10.735 Value of materials.

(a) *Calculating the value of materials.* For purposes of calculating the regional value content of a good under General Note 28(n), HTSUS, and for purposes of applying the *de minimis* (*see* §10.732 of this subpart) provisions of General Note 28(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required

due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for exportation to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. The producer in Australia purchases material x from an unrelated seller in Australia for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for exportation to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, the Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Australia ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Australia by the seller (or by anyone else). So long as the producer acquired material x in Australia, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for exportation to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, the price paid by the producer should be modified so that the value is the transaction value of identical goods sold within Australia at or about the same time the goods were sold to the producer in Australia. Thus, if the seller of material x also sold an identical material to another buyer in Australia without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products;

(iv) The cost of processing incurred in the territory of one or both of the Parties in the production of the non-originating material; and

(v) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 28, HTSUS, and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.

§ 10.736 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 28(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are not invoiced separately from the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.734 of this subpart.

§ 10.737 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.738 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the AFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 28(n), HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Australian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.735(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* § 10.734(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.734(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.739 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.729 (n) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 28(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.729(n) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Australian Producer A produces good C. Producer A ships good C to the U.S. in a shipping container which it purchased from Company B in Australia. The shipping container is originating. The value of the shipping container determined under section § 10.735(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The United States importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.734(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.740 Indirect materials.

An indirect material, as defined in § 10.729(h) of this subpart, will be considered to be an originating material without regard to where it is produced, and its value will be the cost registered in the accounting records of the producer of the good.

Example. Australian Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.730(b)(1) of this subpart and General Note 28(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.741 Third country transportation.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.730 of this subpart will not be considered an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of the Parties. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.742 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential tariff treatment made under

§ 10.723(a) of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may be conducted by means of one or more of the following:

(1) Requests for information from the importer;

(2) Written requests for information to the exporter or producer;

(3) Requests for the importer to arrange for the exporter or producer to provide information directly to CBP;

(4) Visits to the premises of the exporter or producer in Australia, in accordance with procedures that the Parties adopt pertaining to the verification; and

(5) Such other procedures as the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.743 Special rule for verifications in Australia of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Australia conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include suspending the application of preferential tariff treatment to the textile or apparel good for which a claim of origin has been made. If an exporter, producer, or other person refuses to consent to a visit as provided for in this paragraph, or if CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, or CBP makes a negative determination, CBP, if directed by the President, may take appropriate action which may include denying the application of preferential tariff treatment to the textile or apparel good subject to the verification, and to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that an Australian exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Australia conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 6.5 of the AFTA, which indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Australian entity where the reasonable suspicion of unlawful activity relates to those goods. If an exporter, producer, or other person refuses to consent to a visit as provided for in this paragraph, or if CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, or makes a negative determination, CBP, if directed by the President, may take appropriate action which may include denying the application of preferential tariff treatment to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) *Assistance by U.S. officials to Australian authorities.* U.S. officials may

undertake or assist in a verification under this section by conducting visits in Australia, along with the competent authorities of Australia, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Australia to the United States.

(d) *Treatment of documents and information provided to CBP.* Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Australia consistent with the laws, regulations, and procedures of Australia, will be treated as confidential in accordance with Article 22.4 of the AFTA (Disclosure of Information).

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.744 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.723(a) of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 28, HTSUS, and in §§ 10.729 through 10.741 of this subpart, the legal basis for the determination.

PENALTIES

§ 10.745 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the AFTA.

§ 10.746 Corrected claim or supporting statement.

An importer who makes a corrected claim under § 10.723(b) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect supporting statement, provided that the corrected claim or supporting statement is promptly and voluntarily made pursuant to the terms set forth in § 10.747 of this subpart.

§ 10.747 Framework for correcting claims or supporting statements.

(a) *''Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or supporting statement will be deemed to have been done promptly and voluntarily if:

(1)(i) Done within one year following the date on which the importer made the incorrect claim; or

(ii) Done later than one year following the date on which the importer made the incorrect claim, provided the corrected claim is made:

(A) Before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(B) Before any of the events specified in § 162.74(i) of this chapter have occurred; or

(C) Within 30 days after the importer initially becomes aware that the incorrect claim is not valid; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) Accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, an importer who acted fraudulently in making an incorrect claim

may not make a voluntary correction of that claim. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of Appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim relates;

(2) Identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within one (1) year thereafter, or within any extension of that 1-year period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.748 Goods re-entered after repair or alteration in Australia.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Australia as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Australia, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. The term ''repair or alternation'' does not include an operation or process that transforms an unfinished good into a finished good.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Australia, are incomplete for their intended use and for which the processing operation performed in Australia constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of § 10.8(a) through (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Australia after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart M—United States-Morocco Free Trade Agreement

SOURCE: CBP Dec. 07–51, 72 FR 35651, June 29, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.761 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Morocco Free

Trade Agreement (the MFTA) signed on June 15, 2004, and under the United States-Morocco Free Trade Agreement Implementation Act (the Act; 118 Stat. 1103). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the MFTA and the Act are contained in Parts 102, 162, and 163 of this chapter.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007, as amended at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

§ 10.762 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim of origin*. ''Claim of origin'' means a claim that a good is an originating good;

(b) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the MFTA to an originating good;

(c) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Days*. ''Days'' means calendar days.

(f) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(g) *Foreign material*. ''Foreign material'' means a material other than a material produced in the territory of one or both of the Parties;

(h) *GATT 1994*. ''GATT 1994'' means the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

(i) *Good*. ''Good'' means any merchandise, product, article, or material;

(j) *Harmonized System*. ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Originating*. ''Originating'' means a good qualifying under the rules of origin set forth in General Note 27, HTSUS, and MFTA Chapter Four (Textiles and apparel) or Chapter Five (Rules of Origin);

(n) *Party*. ''Party'' means the United States or the Kingdom of Morocco;

(o) *Person*. ''Person'' means a natural person or an enterprise;

(p) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the MFTA to an originating good;

(q) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(r) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in

the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(s) *Territory*. ''Territory'' means:

(1) With respect to Morocco, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(t) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.763 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for MFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol ''MA'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.764 Declaration.

(a) *Contents*. An importer who claims preferential tariff treatment for a good under the MFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone, and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone, and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in the territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 27(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not

undergone an applicable change in tariff classification specified in General Note 27(h), HTSUS;

(3) Must include a statement, in substantially the following form:

''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 these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Morocco Free Trade Agreement; and

This document consists of ____pages, including all attachments.''

(b) *Responsible official or agent*. The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The declaration must be completed in the English language.

(d) *Applicability of declaration*. The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

§ 10.765 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.763 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the MFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.764 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) I*nformation provided by exporter or producer*. The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.766 Declaration not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.764 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the MFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.767 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good under § 10.763 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements*. The records and documents referred to in paragraph (a) of

this section are in addition to any other records required to be made, kept, and made available to CBP under part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.768 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.764 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.777 of this subpart).

RULES OF ORIGIN

§ 10.769 Definitions.

For purposes of §§ 10.769 through 10.777:

(a) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good.* ''Good'' means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties.* ''Goods wholly the growth, product, or manufacture of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(5) on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer*. Importer means a person who imports goods into the territory of a Party;

(f) *Indirect material*. ''Indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material*. ''Material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties*. ''Material produced in the territory of one or both of the Parties'' means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce*. A ''new or different article of commerce'' exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§102.1 through 102.21 of this chapter;

(j) *Non-originating material*. ''Non-originating material'' means a material that does not qualify as originating under this subpart or General Note 27, HTSUS;

(k) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good*. ''Remanufactured good'' means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to, and meets the similar performance standards as, a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations*. ''Simple combining or packaging operations'' means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together;

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007, as amended at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

§ 10.770 Originating goods.

(a) *General*. A good will be considered an originating good under the MFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in §10.769(i) of this subpart, that has been grown, produced, or manufactured in

the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 27(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 27(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 27(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 27(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 27, HTSUS.

(b) *Value-content requirement*. A good described in paragraph (a)(2) of this section will be considered an originating good under the MFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations (*see* § 10.774 of this subpart) performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations*. For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007, as amended at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

§ 10.771 Textile or apparel goods.

(a) *De minimis*. Except as provided in paragraph (a)(1) of this section, a textile or apparel good that is not an originating good under the MFTA 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 General Note 27(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers is not more than seven percent of the total weight of that component.

(1) *Exception*. A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(2) *Yarn, fabric, or group of fibers*. For purposes of paragraph (a) of this section, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the yarn, fabric, or group of fibers.

(b) *Textile or apparel goods put up in sets*. Notwithstanding the specific rules specified in General Note 27(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the MFTA 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 appraised value of the set.

§ 10.772 Accumulation.

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.770 of this subpart and all other applicable requirements of General Note 27, HTSUS.

§ 10.773 Value of materials.

(a) *General.* For purposes of § 10.770(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties, includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

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

§ 10.774 Direct costs of processing operations.

(a) *Items included.* For purposes of § 10.770(b) of this subpart, the words ''direct costs of processing operations'', with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

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

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of § 10.770(b) of this subpart, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

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

§ 10.775 Packaging and packing materials and containers for retail sale and for shipment.

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under § 10.770 of this subpart and General Note 27, HTSUS, except to the extent that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in § 10.770(b) of this subpart.

§ 10.776 Indirect materials.

Indirect materials are to be disregarded in determining whether a

good qualifies as an originating good under § 10.770 of this subpart and General Note 27, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in § 10.770(b) of this subpart.

§ 10.777 Imported directly.

(a) *General.* To qualify as an originating good under the MFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the MFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

TARIFF PREFERENCE LEVEL

§ 10.778 Filing of claim for tariff preference level.

A fabric or apparel good described in § 10.779 of this subpart that does not qualify as an originating good under § 10.770 of this subpart may nevertheless be entitled to preferential tariff treatment under the MFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9912.99.20) immediately above the applicable subheading in Chapters 51 through 62 of the HTSUS under which each non-originating fabric or apparel good is classified.

§ 10.779 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under § 10.778 of this subpart:

(a) *Fabric goods.* Fabric goods provided for in Chapters 51, 52, 54, 55, 58, and 60 of the HTSUS that are wholly formed in Morocco, regardless of the origin of the fiber or yarn used to produce the goods, provided that they meet the applicable conditions for preferential tariff treatment under the MFTA, other than the condition that they are originating; and

(b) *Apparel goods.* Apparel goods provided for in Chapters 61 and 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in Morocco, regardless of the origin of the fabric or yarn used to produce the goods, provided that they meet the applicable conditions for preferential tariff treatment under the MFTA, other than the condition that they are originating goods.

§ 10.780 Transshipment of non-originating fabric or apparel goods.

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party.

For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, 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 territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or other aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.781 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.

(a) *Effect of noncompliance.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.780 of this subpart were met.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.784 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under § 10.763 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.785 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.763 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 27, HTSUS, and in §§10.769 through 10.777 of this subpart, the legal basis for the determination.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007. Redesignated at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

PENALTIES

§ 10.786 Violations relating to the MFTA.

All criminal, civil, or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the MFTA.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007. Redesignated at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.787 Goods re-entered after repair or alteration in Morocco.

(a) *General*. This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Morocco as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Morocco, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment*. The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Morocco, are incomplete for their intended use and for which the processing operation performed in Morocco constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation*. The provisions of §10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Morocco after having been exported for repairs or alterations and which are claimed to be duty free.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007. Redesignated at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

Subpart N—United States-Bahrain Free Trade Agreement

SOURCE: CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.801 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Bahrain Free Trade Agreement (the BFTA) signed on September 14, 2004, and under the United States-Bahrain Free Trade Agreement Implementation Act (the Act; 119 Stat. 3581). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the BFTA and the Act are contained in parts 24, 102, 162, and 163 of this chapter.

§ 10.802 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim of origin*. ''Claim of origin'' means a claim that a good is an originating good or a good of a Party;

(b) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the BFTA to an originating good or other good specified in the BFTA, and to an exemption from the merchandise processing fee;

(c) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Days*. ''Days'' means calendar days;

(f) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(g) *Foreign material*. ''Foreign material'' means a material other than a material produced in the territory of one or both of the Parties;

(h) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(i) *Good*. ''Good'' means any merchandise, product, article, or material;

(j) *Harmonized System*. ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Originating*. ''Originating'' means a good qualifying under the rules of origin set forth in General Note 30, HTSUS, and BFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(n) *Party*. ''Party'' means the United States or the Kingdom of Bahrain;

(o) *Person*. ''Person'' means a natural person or an enterprise;

(p) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the BFTA to an originating good and an exemption from the merchandise processing fee;

(q) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(r) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(s) *Territory*. ''Territory'' means:

(1) With respect to Bahrain, the territory of Bahrain as well as the maritime areas, seabed, and subsoil over which Bahrain exercises, in accordance with international law, sovereignty, sovereign rights, and jurisdiction; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(t) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.803 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for BFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol ''BH'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.804 Declaration.

(a) *Contents*. An importer who claims preferential tariff treatment for a good under the BFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in the territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS;

(3) Must include a statement, in substantially the following form:

''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 these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Bahrain Free Trade Agreement; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent*. The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The declaration must be completed in the English language.

(d) *Applicability of declaration*. The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended at CBP 08-28, 73 FR 42681, July 23, 2008]

§ 10.805 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.803 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the BFTA:

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.804 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.806 Declaration not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.804 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the BFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.807 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good under § 10.803 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements*. The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under part 163 of this chapter.

(c) *Method of maintenance*. The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.808 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General*. If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.804 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.817 of this subpart).

RULES OF ORIGIN

§ 10.809 Definitions.

For purposes of §§ 10.809 through 10.817:

(a) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good.* ''Good'' means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties.* ''Goods wholly the growth, product, or manufacture of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(6) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer.* Importer means a person who imports goods into the territory of a Party;

(f) *Indirect material.* ''Indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in

the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material.* ''Material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties.* ''Material produced in the territory of one or both of the Parties'' means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce.* A ''new or different article of commerce'' exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§102.1 through 102.21 of this chapter;

(j) *Non-originating material.* ''Non-originating material'' means a material that does not qualify as originating under this subpart or General Note 30, HTSUS;

(k) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good.* ''Remanufactured good'' means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations.* ''Simple combining or packaging operations'' means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking and packaging components together.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended at CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.810 Originating goods.

(a) *General.* A good will be considered an originating good under the BFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in §10.809(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 30(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 30(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 30(h), HTSUS, as a result of production occurring entirely in the

territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 30(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 30, HTSUS.

(b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the BFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

§ 10.811 Textile or apparel goods.

(a) *De minimis*—(1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the BFTA 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 General Note 30(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers or yarns is not more than seven percent of the total weight of that component.

(2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 30(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the BFTA 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 appraised value of the set.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended at CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.812 Accumulation.

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.810 of this subpart and all other applicable requirements of General Note 30, HTSUS.

§ 10.813 Value of materials.

(a) *General.* For purposes of § 10.810(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the

seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

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

§ 10.814 Direct costs of processing operations.

(a) *Items included.* For purposes of § 10.810(b) of this subpart, the words ''direct costs of processing operations'', with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

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

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of § 10.810(b) of this subpart, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

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

§ 10.815 Packaging and packing materials and containers for retail sale and for shipment.

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under § 10.810 of this subpart and General Note 30, HTSUS, except to the extent that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in § 10.810(b) of this subpart.

§ 10.816 Indirect materials.

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under § 10.810 of this subpart and General Note 30, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in § 10.810(b) of this subpart.

§ 10.817 Imported directly.

(a) *General.* To qualify as an originating good under the BFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other

operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the BFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended at CBP Dec. 09-17, 74 FR 23951, May 22, 2009]

TARIFF PREFERENCE LEVEL

§ 10.818 Filing of claim for tariff preference level.

A fabric, apparel, or made-up good described in § 10.819 of this subpart that does not qualify as an originating good under § 10.810 of this subpart may nevertheless be entitled to preferential tariff treatment under the BFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9914.99.20) immediately above the applicable subheading in Chapter 52 through Chapter 63 of the HTSUS under which each non-originating fabric or apparel good is classified.

§ 10.819 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under § 10.818 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XIV, Chapter 99, HTSUS):

(a) Cotton or man-made fiber fabric goods provided for in Chapters 52, 54, 55, 58, and 60 of the HTSUS that are wholly formed in the territory of Bahrain from yarn produced or obtained outside the territory of Bahrain or the United States;

(b) Cotton or man-made fiber fabric goods provided for in subheadings 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20, 5802.30, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30, 5805.00.30, 5805.00.40, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.20, 5807.90.05, 5807.90.20, 5808.10.40, 5808.10.70, 5808.90, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, and 6006.44 of the HTSUS that are wholly formed in the territory of Bahrain from yarn spun in the territory of Bahrain or the United States from fiber produced or obtained outside the territory of Bahrain or the United States;

(c) Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain from fabric or yarn produced or obtained outside the territory of Bahrain or the United States; and

(d) Cotton or man-made fiber made-up goods provided for in Chapter 63 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain from fabric wholly formed in Bahrain or the United States from yarn produced or obtained outside the territory of Bahrain or the United States.

§ 10.820 Certificate of eligibility.

Upon request, an importer claiming preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit to CBP a certificate of eligibility. The certificate of eligibility must be completed and signed by an authorized official of the Government of Bahrain and must be in the possession of the importer at the time the preferential tariff treatment is claimed.

§ 10.821 Declaration.

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit, at the request of the port director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

(1) A description of the good, quantity, invoice numbers, and bills of lading;

(2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;

(3) A reference to the specific provision in § 10.819 of this subpart that forms the basis for the claim for preferential tariff treatment; and

(4) A statement as to any fiber, yarn, or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

§ 10.822 Transshipment of non-originating fabric or apparel goods.

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended at CBP 08-28, 73 FR 42681, July 23, 2008; CBP Dec. 09-17, 74 FR 23951, May 22, 2009]

§ 10.823 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.822 of this subpart were met.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.824 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under § 10.803 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.825 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.803 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 30, HTSUS, and in §§ 10.809 through 10.817 of this subpart, the legal basis for the determination.

PENALTIES

§ 10.826 Violations relating to the BFTA.

All criminal, civil, or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the BFTA.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.827 Goods re-entered after repair or alteration in Bahrain.

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Bahrain as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Bahrain, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Bahrain, are incomplete for their intended use and for which the processing operation performed in Bahrain constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation*. The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Bahrain after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart O—Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006

SOURCE: CBP Dec. 07–43, 72 FR 34369, June 22, 2007, unless otherwise noted.

§ 10.841 Applicability.

Title V of Public Law 109–432, entitled the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE I Act), amended the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) by adding a new section 213A (19 U.S.C. 2703A) to authorize the President to extend additional trade benefits to Haiti. part I, Subtitle D, Title XV of Public Law 110–234, entitled the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act) amended certain provisions within section 213A. Section 213A of the CBERA provides for the duty-free treatment of certain apparel articles and certain wiring sets from Haiti. The provisions of this subpart set forth the legal requirements and procedures that apply for purposes of obtaining duty-free treatment pursuant to CBERA section 213A.

[CBP Dec. 08-24, 73 FR 56725, Sept. 30, 2008]

§ 10.842 Definitions.

As used in this subpart, the following terms have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Apparel articles*. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS;

(b) *Applicable one-year period*. ''Applicable one-year period'' means each of the following one-year periods:

(1) *Initial applicable one-year period*. ''Initial applicable one-year period'' means the period beginning on December 20, 2006, and ending on December 19, 2007;

(2) *Second applicable one-year period*. ''Second applicable one-year period'' means the period beginning on December 20, 2007, and ending on December 19, 2008;

(3) *Third applicable one-year period*. ''Third applicable one-year period'' means the period beginning on December 20, 2008, and ending on December 19, 2009;

(4) *Fourth applicable one-year period*. ''Fourth applicable one-year period'' means the period beginning on December 20, 2009, and ending on December 19, 2010; and

(5) *Fifth applicable one-year period*. ''Fifth applicable one-year period'' means the period beginning on December 20, 2010, and ending on December 19, 2011;

(c) *Customs territory of the United States*. ''Customs territory of the United States'' means the 50 states, the District of Columbia, and Puerto Rico;

(d) *Declared customs value*. ''Declared customs value'' means the appraised value of an imported article determined in accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a);

(e) *Enter; entry*. ''Enter'' and ''entry'' refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States;

(f) *Entity controlling production*. ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in Haiti through a contractual relationship or other indirect means;

(g) *Fabric component*. ''Fabric component'' means a component cut from fabric to the shape or form of the component as it is used in the apparel article;

(h) *Foreign material*. ''Foreign material'' means a material not produced in Haiti or any eligible country described in § 10.844(c);

(i) *HTSUS*. ''HTSUS'' means the Harmonized Tariff Schedule of the United States;

(j) *Knit-to-shape articles*. ''Knit-to-shape,'' when used with reference to apparel articles, means any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape'';

(k) *Knit-to-shape components*. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape'';

(l) *Major parts*. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components;

(m) *Producer*. ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in Haiti;

(n) *Self-start edge*. ''Self-start edge,'' when used with reference to knit-to-shape components, means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine;

(o) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the HTSUS;

(p) *Wholly assembled in Haiti*. ''Wholly assembled in Haiti'' means that all components, of which there must be at least two, pre-existed in essentially the same condition as found in the finished good and were combined to form the finished good in Haiti. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, and buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, and pockets), will not affect the determination of whether a good is ''wholly assembled in Haiti''.

(q) *Wholly the growth, product, or manufacture*. ''Wholly the growth, product, or manufacture,'' when used with reference to Haiti or one or more eligible countries described in § 10.844(c) of this subpart, refers both to any article which has been entirely grown, produced, or manufactured in Haiti or one or more eligible countries described in § 10.844(c) of this subpart and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in Haiti or one or more eligible countries described in § 10.844(c) of this subpart.

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

§ 10.843 Articles eligible for duty-free treatment.

The duty-free treatment referred to in § 10.841 of this subpart applies to the articles described in paragraphs (a) through (j) of this section that are imported directly from Haiti or the Dominican Republic into the customs territory of the United States and to the articles described in paragraph (k) of this section that are imported directly from Haiti into the customs territory of the United States.

(a) *Certain apparel articles*. Apparel articles of a producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, subject to the applicable quantitative limits set forth in U.S. Note 6(g), Subchapter XX, Chapter 98, HTSUS, and provided that the applicable value-content requirement set forth in § 10.844(a) of this subpart is met through the use of:

(1) The individual entry method (*see* § 10.844(a)(1) of this subpart); or

(2) The annual aggregation method (*see* § 10.844(a)(2) of this subpart).

(b) *Certain woven apparel articles.* Apparel articles classifiable in Chapter 62 of the HTSUS that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made, subject to the applicable quantitative limits set forth in U.S. Note 6(h), Subchapter XX, Chapter 98, HTSUS.

(c) *Brassieres.* Apparel articles classifiable in subheading 6212.10 of the HTSUS that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(d) *Certain knit apparel articles*—(1) *General.* Apparel articles classifiable in Chapter 61 of the HTSUS (other than those described in paragraph (d)(2) of this section) that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made, subject to the applicable quantitative limits set forth in U.S. Note 6(j), Subchapter XX, Chapter 98, HTSUS.

(2) *Exclusions.* Duty-free treatment for the articles described in paragraph (d)(1) of this section will not apply to the following:

(i) The following apparel articles of cotton, for men or boys, that are classifiable in subheading 6109.10.00 of the HTSUS:

(A) All white T-shirts, with short hemmed sleeves and hemmed bottom, with crew or round neckline or with V-neck and with a mitered seam at the center of the V, and without pockets, trim, or embroidery;

(B) All white singlets, without pockets, trim, or embroidery; and

(C) Other T-shirts, but not including thermal undershirts;

(ii) T-shirts for men or boys that are classifiable in subheading 6109.90.10 of the HTSUS;

(iii) The following apparel articles of cotton, for men or boys, that are classifiable in subheading 6110.20.20 of the HTSUS:

(A) Sweatshirts; and

(B) Pullovers, other than sweaters, vests, or garments imported as part of playsuits; or

(iv) Sweatshirts for men or boys, of man-made fibers and containing less than 65 percent by weight of man-made fibers, that are classifiable in subheading 6110.30.30 of the HTSUS.

(e) *Other apparel articles.* Any of the following apparel articles that is wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(1) Any apparel article that is of a type listed in chapter rule 3, 4, or 5 for chapter 61 of the HTSUS (as such chapter rules are contained in section A of the Annex to Presidential Proclamation 8213 of December 20, 2007) as being excluded from the scope of such chapter rule, when such chapter rule is applied to determine whether an apparel article is an originating good for purposes of General Note 29(n), HTSUS, except that, for purposes of this provision, reference in such chapter rules to subheading 6104.12.00 of the HTSUS is deemed to refer to subheading 6104.19.60 of the HTSUS; or

(2) Any apparel article (other than articles to which paragraph (c) of this section applies (brassieres)) that is of a type listed in chapter rule 3(a), 4(a), or 5(a) for chapter 62 of the HTSUS, as such chapter rules are contained in paragraph 9 of section A of the Annex to Presidential Proclamation 8213 of December 20, 2007.

(f) *Luggage and similar items.* Articles classifiable in subheading 4202.12, 4202.22, 4202.32, or 4202.92 of the HTSUS that are wholly assembled in Haiti, without regard to the source of the fabric, components, or materials from which the article is made.

(g) *Headgear.* Articles classifiable in heading 6501, 6502, or 6504, or subheading 6505.90 of the HTSUS that are wholly assembled, knit-to-shape, or formed in Haiti from any combination

of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(h) *Certain sleepwear*. Any of the following apparel articles that is wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(1) Pajama bottoms and other sleepwear for women and girls, of cotton, that are classifiable in subheading 6208.91.30, HTSUS, or of man-made fibers, that are classifiable in subheading 6208.92.00, HTSUS; or

(2) Pajama bottoms and other sleepwear for girls, of other textile materials, that are classifiable in subheading 6208.99.20, HTSUS.

(i) *Earned import allowance rule*. Apparel articles wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate issued by the Department of Commerce that reflects the amount of credits equal to the total square meter equivalents of such apparel articles, in accordance with the earned import allowance program established by the Secretary of Commerce pursuant to 19 U.S.C. 2703A(b)(4)(B).

(j) *Apparel articles of short supply materials*. Apparel articles that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabrics, fabric components, components knit-to-shape, or yarns from which the article is made, if the fabrics, fabric components, components knit-to-shape, or yarns comprising the component that determines the tariff classification of the article are of any of the following:

(1) 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 North American Free Trade Agreement (NAFTA); or

(2) Fabrics or yarns, to the extent that such fabrics or yarns are designated as not being available in commercial quantities for purposes of:

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

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

(iii) 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)(II) or 3203(b)(3)(B)(ii)); or

(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 individual 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 claimed under § 10.847(a) of this subpart, whether entered on an individual entry or annual aggregation basis, will be 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 increased 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).

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 eligible 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 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 consideration 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 is submitted to CBP within 30 days following the end of the applicable one-year period during which the increased percentage is met (*see* § 10.844(a)(4)(v) of this subpart); and

(3) A request for liquidation or reliquidation with respect to such entry is filed with CBP before the 90th day after CBP determines and notifies the importer that 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 during that applicable one-year period.

Example. A Haitian producer of articles that meet the description in § 10.843(a) of this subpart begins exporting those articles to the United States during the initial applicable one-year period and elects to use the annual aggregation method for purposes of meeting the applicable value-content requirement. The articles entered during that initial period meet a value-content percentage of 48%, while articles entered during the second applicable one-year period meet a value-content percentage of 62%. The producer's articles may not receive duty-free treatment during the initial applicable one-year period because the requisite 50% value-content requirement was not met. The producer's articles also are ineligible for duty-free treatment during the second applicable one-year period because the 50% value-content requirement was not met in the immediately preceding period (the initial applicable one-year period). However, because the producer's articles entered during the second applicable one-year period satisfy the increased value-content percentage requirement (60%), the importer(s) of these articles may file a request for and receive a refund of the duties paid with respect to the articles entered during that period, assuming compliance with the conditions and requirements

set forth in § 10.847 of this subpart. In addition, the producer's articles entered during the third applicable one-year period are eligible for duty-free treatment based on compliance with the increased value-content percentage in the second applicable one-year period.

§ 10.846 Imported directly.

(a) *General.* To be eligible for duty-free treatment under this subpart, an article must be imported directly from Haiti into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(1) Direct shipment from Haiti to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Haiti to the United States through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination, the articles in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail, provided that the articles are imported as a result of the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

(b) *Documentary evidence.* An importer making a claim for duty-free treatment under § 10.847 of this subpart may be required to demonstrate, to CBP's satisfaction, that the articles were ''imported directly'' as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.847 Filing of claim for duty-free treatment.

(a) *General.* An importer may make a claim for duty-free treatment for an article described in § 10.843 of this subpart by including on the entry summary, or equivalent documentation, the applicable subheading within Subchapter XX of Chapter 98 of the HTSUS under which the article is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system. The applicable subheadings within Subchapter XX, Chapter 98, HTSUS, are as follows:

(1) Subheading 9820.61.25 for apparel articles described in § 10.843(a) of this subpart for which the individual entry method is used for purposes of meeting the applicable value-content requirement set forth in § 10.844(a) of this subpart;

(2) Subheading 9820.61.30 for apparel articles described in § 10.843(a) of this subpart for which the annual aggregation method is used for purposes of meeting the applicable value-content requirement set forth in § 10.844(a) of this subpart;

(3) Subheading 9820.62.05 for apparel articles described in § 10.843(b) of this subpart;

(4) Subheading 9820.62.12 for brassieres described in § 10.843(c) of this subpart;

(5) Subheading 9820.61.35 for apparel articles described in § 10.843(d) of this subpart;

(6) Subheading 9820.61.40 for apparel articles described in § 10.843(e) of this subpart;

(7) Subheading 9820.42.05 for articles described in § 10.843(f) of this subpart;

(8) Subheading 9820.65.05 for articles described in § 10.843(g) of this subpart;

(9) Subheading 9820.62.20 for articles described in § 10.843(h) of this subpart;

(10) Subheading 9820.62.25 for articles described in § 10.843(i) of this subpart;

(11) Subheading 9820.62.30 for articles described in § 10.843(j) of this subpart; and

(12) Subheading 9820.85.44 for wiring sets described in § 10.843(k) of this subpart.

(b) *Restriction on claims submitted under subheading 9820.61.30, HTSUS.* An importer may make a claim for duty-free treatment under subheading 9820.61.30, HTSUS, for apparel articles described in § 10.843(a) of this subpart for which the annual aggregation method is used, only if the importer has a copy of a certification by the producer or entity controlling production setting forth its election to use the annual aggregation method for its articles (*see* § 10.848(c)(3) of this subpart). In the absence of receipt of such certification from the producer or entity controlling production, an importer of articles described in § 10.843(a) of this subpart for which duty-free treatment is sought under this subpart must enter the articles under subheading 9820.61.25, HTSUS.

(c) *Corrected claim.* If, after making a claim for duty-free treatment under paragraph (a) of this section, the importer has reason to believe that the claim is incorrect, the importer must promptly make a corrected claim and pay any duties that may be due. A corrected claim will be effected by submission of a letter or other written statement to the CBP port where the claim was originally filed.

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

§ 10.848 Declaration of compliance.

(a) *General.* Each importer claiming duty-free treatment for apparel articles, as described in § 10.843(a) of this subpart, of a producer or entity controlling production that uses the annual aggregation method to satisfy the applicable value-content requirement set forth in § 10.844(a) of this subpart with respect to the entries filed by the importer during an applicable one-year period must prepare and submit to CBP a declaration of compliance with the applicable value-content requirement 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. The declaration of compliance must be sent to: Office of International Trade, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) *Effect of noncompliance*—(1) *Initial applicable one-year period.* If an importer fails to submit to CBP the declaration of compliance required under paragraph (a) of this section within 30 days following the end of the initial applicable one-year period, CBP may deny duty-free treatment to all entries of apparel articles, as described in § 10.843(a), of that producer or entity controlling production that were filed by that importer during the initial applicable one-year period and that are entered by that importer during the next succeeding applicable one-year period.

(2) *Other applicable one-year periods.* If an importer fails to submit to CBP the declaration of compliance required by paragraph (a) of this section within 30 days following the end of any applicable one-year period (other than the initial applicable one-year period), CBP may deny duty-free treatment to all entries of 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.

(c) *Contents.* A declaration of compliance submitted to CBP under paragraph (a) of this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The applicable one-year period during which the aggregation method was used (year beginning December 20, 20__, year ending December 19, 20__);

(ii) The legal name, address, telephone, fax number, e-mail address (if any), and identification number of the importer of record, and the legal name, telephone, and e-mail address (if any) of the point of contact;

(iii) With respect to each entry for which duty-free treatment is claimed for apparel articles described in § 10.843(a) of this subpart and for which

the aggregation method is used, the entry number, line number(s), port of entry, and line value;

(iv) If the producer or entity controlling production elects to include in the aggregation calculation entries of brassieres receiving duty-free treatment under § 10.843(c) of this subpart and entries of apparel articles that are wholly assembled or knit-to-shape in Haiti and that are receiving preferential tariff treatment under any provision of law other than section 213A of the CBERA or are subject to the rate of duty in the ''General'' subcolumn of column 1 of the HTSUS (*see* § 10.844(a)(2)(iii)(B) and (C) of this subpart), the entry number, line number(s), port of entry, line value, name and address of the producer(s), and, if applicable, name and address of the entity controlling production;

(v) The value-content percentage that was met during the applicable one-year period with respect to each producer or entity controlling production;

(vi) The name and title of the person who prepared the declaration of compliance. The declaration must be prepared and signed by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts;

(vii) Signature of the person who prepared the declaration of compliance; and

(viii) Date the declaration of compliance was prepared and signed; and

(3) Must include as an attachment to the declaration a copy of a certification from each producer or entity controlling production setting forth its election to use the annual aggregation method, a description of the classes or kinds of apparel articles involved, and the name and address of each producer or entity controlling production.

§ 10.849 Importer obligations.

(a) *General*. An importer who makes a claim for duty-free treatment under § 10.847 of this subpart for an article described in § 10.843 of this subpart:

(1) Will be deemed to have certified that the article is eligible for duty-free treatment under this subpart;

(2) Is responsible for the truthfulness of the statements and information contained in the declaration of compliance, if that document is required to be submitted to CBP pursuant to §§ 10.844(a)(4)(v) or 10.848(a) of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. When requested, CBP may arrange for the direct submission by the exporter, producer, or entity controlling production of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter, producer, or entity controlling production*. The fact that the importer has made a claim for duty-free treatment or prepared a declaration of compliance based on information provided by an exporter, producer, or entity controlling production will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.850 Verification of claim for duty-free treatment.

(a) *General*. A claim for duty-free treatment made under § 10.847 of this subpart, including any declaration of compliance or other information submitted to CBP in support of the claim, will be subject to whatever verification CBP deems necessary. In the event that CBP is provided with insufficient information to verify or substantiate the claim, including the statements and information contained in a declaration of compliance (if required under § 10.844(a)(4)(v) or § 10.848(a) of this subpart), CBP may deny the claim for duty-free treatment.

(b) *Documentation and information subject to verification*. A verification of a claim for duty-free treatment under § 10.847 of this subpart may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter; and

(2) The documentation and information set forth in paragraphs (b)(2)(i) through (b)(2)(v) of this section, when requested by CBP. This documentation

and information may be made available to CBP by the importer or the importer may arrange to have the documentation and information made available to CBP directly by the exporter, producer, or entity controlling production:

(i) Documentation and other information regarding all apparel articles that meet the requirements specified in § 10.843(a) of this subpart that were exported to the United States and that were entered during the applicable one-year period, whether or not a claim for duty-free treatment was made under § 10.847 of this subpart. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(ii) Records to document the cost of all yarn, fabric, fabric components, and knit-to-shape components that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iii) Records to document the direct costs of processing operations performed in Haiti or one or more eligible countries described in § 10.844(c) of this subpart, such as direct labor and fringe expenses, machinery and tooling costs, factory expenses, and testing and inspection expenses that were incurred in production;

(iv) Affidavits or statements of origin that certify who manufactured the yarn, fabric, fabric components and knit-to-shape components. The affidavit or statement of origin should include a product description, name and address of the producer, and the date the articles were produced. An affidavit for fabric components should state whether or not subassembly operations occurred; and

(v) Summary accounting and financial records which relate to the source records provided for in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

Subpart P—United States-Oman Free Trade Agreement

SOURCE: CBP Dec. 11-01, 76 FR 701, Jan. 6, 2011, unless otherwise noted.

GENERAL PROVISIONS

§ 10.861 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Oman Free Trade Agreement (the OFTA) signed on January 19, 2006, and under the United States-Oman Free Trade Agreement Implementation Act (the Act; 120 Stat. 1191). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the OFTA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.862 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the OFTA to an originating good or other good specified in the OFTA, and to an exemption from the merchandise processing fee;

(b) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation;

(c) *Days*. ''Days'' means calendar days;

(d) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(e) *Foreign material*. ''Foreign material'' means a material other than a material produced in the territory of one or both of the Parties;

(f) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(g) *Good*. ''Good'' means any merchandise, product, article, or material;

(h) *Harmonized System*. ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(i) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(j) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(k) *Originating*. ''Originating'' means a good qualifying under the rules of origin set forth in General Note 31, HTSUS, and OFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(l) *Party*. ''Party'' means the United States or the Sultanate of Oman;

(m) *Person*. ''Person'' means a natural person or an enterprise;

(n) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the OFTA to an originating good and an exemption from the merchandise processing fee;

(o) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(p) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(q) *Territory*. ''Territory'' means:

(1) With respect to Oman, all the lands of Oman within its geographical boundaries, the internal waters, maritime areas including the territorial sea, and airspace under its sovereignty, and the exclusive economic zone and continental shelf where Oman exercises sovereign rights and jurisdiction in accordance with its domestic law and international law, including the United Nations Convention on the Law of the Sea; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(r) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.863 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for OFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol ''OM'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.864 Declaration.

(a) *Contents*. An importer who claims preferential tariff treatment for a good

under the OFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS;

(3) Must include a statement, in substantially the following form: ''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 these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Oman Free Trade Agreement; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent*. The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The declaration must be completed in the English language.

(d) *Applicability of declaration*. The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

§ 10.865 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.863 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the OFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.864 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.866 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.864 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the OFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.867 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.863 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.868 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.864 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.880 of this subpart).

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.869 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the

good in accordance with the procedures set forth in § 10.870 of this subpart. Subject to the provisions of § 10.868 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.871(c) of this part.

§ 10.870 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.869 of this subpart must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(3) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.871 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.870 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for a refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under § 10.870 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.868 and § 10.870 of this subpart, or if, following an origin verification under § 10.887 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.887 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the

liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.872 Definitions.

For purposes of §§ 10.872 through 10.880:

(a) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good*. ''Good'' means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties*. ''Goods wholly the growth, product, or manufacture of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(6) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer*. ''Importer'' means a person who imports goods into the territory of a Party;

(f) *Indirect material*. ''Indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material.* ''Material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties.* ''Material produced in the territory of one or both of the Parties'' means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce.* ''New or different article of commerce'' means, except as provided in §10.873(c) of this subpart, a good that:

(1) Has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one of both of the Parties; and

(2) Has a new name, character, or use distinct from the good or material from which it was transformed;

(j) *Non-originating material.* ''Non-originating material'' means a material that does not qualify as originating under this subpart or General Note 31, HTSUS;

(k) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good.* ''Remanufactured good'' means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations.* ''Simple combining or packaging operations'' means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

(o) *Substantially transformed.* ''Substantially transformed'' means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that the good loses its separate identity in the manufacturing or processing operation and:

(1) The good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(2) The physical properties of the good or material are changed to a significant extent; or

(3) The operation undergone by the good or material is complex by reason of the number of different processes and materials involved and the time and level of skill required to perform those processes.

§ 10.873 Originating goods.

(a) *General.* A good will be considered an originating good under the OFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in §10.872(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 31(h), HTSUS,

and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 31(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 31(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 31(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 31, HTSUS.

(b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the OFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

§ 10.874 Textile or apparel goods.

(a) *De minimis*—(1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the OFTA 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 General Note 31(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers or yarns is not more than seven percent of the total weight of that component.

(2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 31(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the OFTA 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 appraised value of the set.

§ 10.875 Accumulation.

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.873 of this subpart and all other applicable requirements of General Note 31, HTSUS.

§ 10.876 Value of materials.

(a) *General.* For purposes of § 10.873(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception*. If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

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

§ 10.877 Direct costs of processing operations.

(a) *Items included*. For purposes of § 10.873(b) of this subpart, the words ''direct costs of processing operations'', with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

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

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included*. For purposes of § 10.873(b) of this subpart, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

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

§ 10.878 Packaging and packing materials and containers for retail sale and for shipment.

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under § 10.873 of this subpart and General Note 31, HTSUS, except that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in § 10.873(b) of this subpart.

§ 10.879 Indirect materials.

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under § 10.873 of this subpart and General Note 31, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in § 10.873(b) of this subpart.

§ 10.880 Imported directly.

(a) *General*. To qualify as an originating good under the OFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the OFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

TARIFF PREFERENCE LEVEL

§ 10.881 Filing of claim for tariff preference level.

A cotton or man-made fiber apparel good described in § 10.882 of this subpart that does not qualify as an originating good under § 10.873 of this subpart may nevertheless be entitled to preferential tariff treatment under the OFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9916.99.20) immediately above the applicable subheading in Chapter 61 or Chapter 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified.

§ 10.882 Goods eligible for tariff preference claims.

Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Oman from fabric or yarn produced or obtained outside the territory of Oman or the United States are eligible for a TPL claim filed under § 10.881 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XVI, Chapter 99, HTSUS).

§ 10.883 [Reserved]

§ 10.884 Declaration.

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.882 of this subpart must submit, at the request of the port director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

(1) A description of the good, quantity, invoice numbers, and bills of lading;

(2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;

(3) A statement as to any yarn or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

§ 10.885 Transshipment of non-originating apparel goods.

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported

directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.886 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating apparel goods.

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.885 of this subpart were met.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.887 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under § 10.863 or § 10.870 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.888 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.863 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates

of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 31, HTSUS, and in §§ 10.863 through 10.886 of this subpart, the legal basis for the determination.

PENALTIES

§ 10.889 Violations relating to the OFTA.

All criminal, civil, or administrative penalties which may be imposed upon importers or other parties for violations of the U.S. customs or related laws or regulations will also apply to importations subject to the OFTA.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.890 Goods re-entered after repair or alteration in Oman.

(a) *General*. This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Oman as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Oman, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, renovation, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment*. The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Oman, are incomplete for their intended use and for which the processing operation performed in Oman constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation*. The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Oman after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart Q—United States-Peru Trade Promotion Agreement

SOURCE: 76 FR 68072, Nov. 3, 2011, unless otherwise noted.

GENERAL PROVISIONS

§ 10.901 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Peru Trade Promotion Agreement (the PTPA) signed on April 12, 2006, and under the United States-Peru Trade Promotion Agreement Implementation Act (the Act; Pub. L. 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the PTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.902 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the PTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin*. ''Claim of origin'' means a claim that a textile or apparel good is an originating good or satisfies

the non-preferential rules of origin of a Party;

(c) *Customs authority*. ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the PTPA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation;

(e) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(f) *Days*. ''Days'' means calendar days;

(g) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(i) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(j) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(k) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(l) *Identical goods*. ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(m) *Indirect material*. ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good in the territory of one or both of the Parties, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production;

(n) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in Chapter Four and Article 3.3 of the PTPA, and General Note 32, HTSUS;

(o) *Party*. ''Party'' means the United States or Peru;

(p) *Person*. ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the PTPA to an originating good, and an exemption from the merchandise processing fee;

(r) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3–C of the PTPA;

(t) *Territory*. ''Territory'' means:

(1) With respect to Peru, the continental territory, the islands, the maritime areas and the air space above them, in which Peru exercises sovereignty and jurisdiction or sovereign rights in accordance with its domestic law and international law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(u) *WTO*. ''WTO'' means the World Trade Organization; and

(v) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.903 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for PTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on:

(1) A certification, as specified in § 10.904 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''PE'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.931 and 10.933 of this subpart).

§ 10.904 Certification.

(a) *General*. An importer who makes a claim under § 10.903(b) of this subpart based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and email address (if any) of the importer of record of the good, the exporter of the good (if different from the producer), and the producer of the good;

(ii) The legal name, address, telephone, and email address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is

claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 32(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 32, HTSUS, under which the good qualifies as an originating good; and

(4) Must include a statement, in substantially the following form:

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 these representations;

The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Peru Trade Promotion Agreement; and

This document consists of _____ pages, including all attachments.

(b) *Responsible official or agent*. The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer*. A certification may be prepared by the exporter or producer of the good on the basis of:

(1) The exporter's or producer's knowledge that the good is originating; or

(2) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(e) *Applicability of certification*. The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification*. A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was signed.

§ 10.905 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.903(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the PTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.904 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties*. An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* §§ 10.931 and 10.933 of this subpart).

§ 10.906 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.904 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.904 of this subpart, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.907 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.903(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the PTPA. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.908 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.904 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the PTPA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.925(a) of this subpart were met.

EXPORT REQUIREMENTS

§ 10.909 Certification for goods exported to Peru.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Peru must provide a copy of the certification (or such other medium or format approved by the Peru customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Peru and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.932 and 10.933 of this subpart).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Peru must maintain, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.910 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.911 of this subpart. Subject to the provisions of § 10.908 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.912(c) of this subpart.

§ 10.911 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a certification prepared in accordance with § 10.904 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.912 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.911 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.911 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.911 of this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under § 10.911 of this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under § 10.911 of this subpart

should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.911 of this subpart.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.911 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.908 and 10.911 of this subpart, or if, following an origin verification under § 10.926 of this subpart, the port director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.926 of this subpart.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.913 Definitions.

For purposes of §§ 10.913 through 10.925:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles*. ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, HTSUS, or motor vehicles provided for in subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material*. ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a

Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good*. ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of the Parties*. ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or more of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Peru and flying its flag; or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in aragraph (g)(6) of this section, if such factory ships are:

(i) Registered or recorded with Peru and fly its flag; or

(i) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Material*. ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line*. ''Model line'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost*. ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs*. ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(l) *Non-originating good or non-originating material*. ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 32, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production*. ''Production'' means growing, mining, harvesting, fishing,

raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(q) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(r) *Remanufactured good.* ''Remanufactured good'' means an industrial good assembled in the territory of one or both of the Parties that is classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

(s) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(t) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(u) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(v) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(w) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(x) *Used.* ''Used'' means utilized or consumed in the production of goods; and

(y) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.914 Originating goods.

Except as otherwise provided in this subpart and General Note 32(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the PTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 32(n), HTSUS, and the good satisfies all other applicable requirements of General Note 32, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 32(n), HTSUS, and satisfies all other applicable requirements of General Note 32, HTSUS; or

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

§ 10.915 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or any of headings 8701 through

8708, HTSUS, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or

(d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Peru or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.916 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.924, for purposes of calculating the regional value content of a good under General Note 32(n), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.918 of this subpart) provisions of General Note 32(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Peru purchases material x from an unrelated seller in Peru for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Peru ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Peru by the seller (or by anyone else). So long as the producer acquired material x in Peru, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Peru at or about the same time the goods were sold to the producer in Peru. Thus, if the seller of material x also sold an identical material to another buyer in Peru without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material

in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 32, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.917 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.914 of this subpart and all other applicable requirements of General Note 32, HTSUS.

§ 10.918 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 32(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 32(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 32, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; and

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS; and

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through

2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(6) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(7) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; and

(8) Except as provided in paragraphs (b)(1) through (b)(7) of this section and General Note 32(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or 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 General Note 32(n), HTSUS, will nevertheless be considered to be an originating good if:

(i) 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; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of one or both of the Parties. For purposes of this paragraph, ''wholly formed'' means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of one or both of the Parties.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

[76 FR 68072, Nov. 3, 2011, as amended at 77 FR 64032, Oct. 18, 2012]

§ 10.919 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.920 Accessories, spare parts, or tools.

(a) *General*. Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 32(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content*. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.915 of this subpart.

§ 10.921 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 32(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.922 Retail packaging materials and containers.

(a) *Effect on tariff shift rule*. Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the PTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 32(n), HTSUS.

(b) *Effect on regional value content calculation*. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Peruvian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.916(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* § 10.915(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.915(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.923 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule*. Packing materials and containers for shipment, as defined in § 10.913(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 32(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation*. Packing materials and containers for shipment, as defined in

§ 10.913(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Peruvian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Peru. The shipping container is originating. The value of the shipping container determined under section § 10.916(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.915(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.924 Indirect materials.

An indirect material, as defined in § 10.902(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

Example. Peruvian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.914(b)(1) of this subpart and General Note 32(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.925 Transit and transshipment.

(a) *General*. A good that has undergone production necessary to qualify as an originating good under § 10.914 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence*. An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.926 Verification and justification of claim for preferential tariff treatment.

(a) *Verification*. A claim for preferential tariff treatment made under § 10.903(b) or § 10.911 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under PTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Peru, to review the records of the type referred to in § 10.909(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.927 Special rule for verifications in Peru of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Peru conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Peru conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the

enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

(d) *Assistance by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Peru, along with the competent authorities of Peru, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Peru to the United States.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.928 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 32, HTSUS, and in §§10.913 through 10.925 of this subpart, the legal basis for the determination.

§ 10.929 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the PTPA rules of origin set forth in General Note 32, HTSUS, CBP may suspend preferential tariff treatment under the PTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 32, HTSUS.

PENALTIES

§ 10.930 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will

also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the PTPA.

§ 10.931 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.903(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.932 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.909(b) with respect to the making of an incorrect certification.

§ 10.933 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily*'' *defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in

order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.934 Goods re-entered after repair or alteration in Peru.

(a) *General*. This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Peru as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Peru, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration*. The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Peru, are incomplete for their intended use and for which the processing operation performed in Peru constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation*. The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Peru after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart R—United States-Korea Free Trade Agreement

SOURCE: 77 FR 15948, Mar. 19, 2012, unless otherwise noted.

GENERAL PROVISIONS

§ 10.1001 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Korea Free Trade Agreement (the UKFTA) signed on June 30, 2007, and under the United States-Korea Free Trade Agreement Implementation Act (the Act; Pub. L. 112–41, 125 Stat. 428 (19 U.S.C. 3805 note)). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the UKFTA and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.1002 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''*Claim for preferential tariff treatment*'' means a claim that a good is entitled to the duty rate applicable under the UKFTA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin*. ''*Claim of origin*'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs duty*. ''*Customs duty*'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, such as an adjustment tariff imposed pursuant to Article 69 of Korea's *Customs Act*, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good

has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered.

(d) *Customs Valuation Agreement*. ''*Customs Valuation Agreement*'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(e) *Days*. ''*Days*'' means calendar days;

(f) *Enterprise*. ''*Enterprise*'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(g) *Enterprise of a Party*. ''*Enterprise of a Party*'' means an enterprise constituted or organized under a Party's law;

(h) *GATT 1994*. ''*GATT 1994*'' means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(i) *Goods of a Party*. ''*Goods of a Party*'' means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

(j) *Harmonized System*. ''*Harmonized System*'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''*Heading*'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''*HTSUS*'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Identical goods*. ''*Identical goods*'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating;

(n) *Indirect material*. ''*Indirect material*'' means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production;

(o) *Korea*. ''*Korea*'' means the Republic of Korea.

(p) *Originating*. ''*Originating*'' means qualifying for preferential tariff treatment under the rules of origin set out in Chapter Four (Textiles and Apparel) or Chapter Six (Rules of Origin and Origin Procedures) of the UKFTA and General Note 33, HTSUS;

(q) *Party*. ''*Party*'' means the United States or the Republic of Korea;

(r) *Person*. ''*Person*'' means a natural person or an enterprise;

(s) *Person of a Party*. ''*Person of a Party*'' means a national or an enterprise of a Party;

(t) *Preferential tariff treatment*. ''*Preferential tariff treatment*'' means the duty rate applicable under the UKFTA to an originating good, and an exemption from the merchandise processing fee;

(u) *Subheading*. ''*Subheading*'' means the first six digits in the tariff classification number under the Harmonized System;

(v) *Textile or apparel good*. ''*Textile or apparel good*'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC'');

(w) *Territory*. ''*Territory*'' means:

(1) With respect to Korea, the land, maritime, and air space over which Korea exercises sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise sovereign rights with respect to the seabed and subsoil and their natural resources;

(x) *WTO*. ''*WTO*'' means the World Trade Organization; and

(y) *WTO Agreement*. ''*WTO Agreement*'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.1003 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for UKFTA preferential tariff treatment, including an exemption from the merchandise processing fee, based on either:

(1) A written or electronic certification, as specified in § 10.1004 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''KR'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.1031 and 10.1033 of this subpart).

§ 10.1004 Certification.

(a) *General*. An importer who makes a claim pursuant to § 10.1003(b) of this subpart based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and email address (if any) of the importer of record of the good (if known), the exporter of the good (if different from the producer), and the producer of the good (if known);

(ii) The legal name, address, telephone, and email address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for

the specific change in tariff classification rule for the good set forth in General Note 33(o), HTSUS; and

(v) The applicable rule of origin set forth in General Note 33, HTSUS, under which the good qualifies as an originating good;

(vi) Date of certification;

(vii) In case of a blanket certification issued with respect to the multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of certification, the period that the certification covers; and

(4) Must include a statement, in substantially the following form:

''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 these representations;
The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Korea Free Trade Agreement; and
This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent*. The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The certification provided for in paragraph (a) of this section must be completed in either the English or Korean language. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer*. (1) A certification may be prepared by the exporter or producer of the good on the basis of:

(i) The exporter's or producer's knowledge that the good is originating; or

(ii) In the case of an exporter, reasonable reliance on the producer's written or electronic certification that the good is originating.

(2) The port director may not require an exporter or producer to provide a written or electronic certification to another person.

(e) *Applicability of certification*. The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification*. A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was issued.

§ 10.1005 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.1003(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the UKFTA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.1004 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties*. An importer will not be subject to civil or administrative penalties under 19 U.S.C.

1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* §§ 10.1031 and 10.1033 of this subpart).

§ 10.1006 Certification not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.1004 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.1004 of this subpart, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.1007 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good (based on either the importer's certification or its knowledge, or on the certification issued by the exporter or producer) imported into the United States under § 10.1003(b) of this subpart must maintain for a minimum of five years from the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the UKFTA. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance*. The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.1008 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General*. If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.1004 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the UKFTA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.1025(a) of this subpart were met.

EXPORT REQUIREMENTS

§ 10.1009 Certification for goods exported to Korea.

(a) *Submission of certification to CBP*. Any person who completes and issues a certification for a good exported from the United States to Korea must provide a copy of the certification (written or electronic) to CBP upon request.

(b) *Notification of errors in certification*. Any person who completes and issues a certification for a good exported from the United States to Korea and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.1032 and 10.1033 of this subpart).

(c) *Maintenance of records*—(1) *General*. Any person who completes and issues a certification for a good exported from the United States to Korea must maintain, for a period of at least

five years after the date the certification was issued, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c)(1) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

[77 FR 15948, Mar. 19, 2012, as amended at 78 FR 32358, May 30, 2013]

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.1010 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.1011 of this subpart. Subject to the provisions of § 10.1008 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.1012(c) of this subpart.

§ 10.1011 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification prepared in accordance with § 10.1004 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.1012 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim made pursuant to § 10.1011 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.1011 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.1011 of this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry*. If the port director determines that a claim for a refund filed under § 10.1011 of this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the port director determines that a claim for a refund filed under § 10.1011 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.1011 of this subpart.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.1011 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.1008 and 10.1011 of this subpart, or if, following an origin verification under § 10.1026 of this subpart, the port director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.1026 of this subpart.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.1013 Definitions.

For purposes of §§ 10.1013 through 10.1025:

(a) *Adjusted value*. ''*Adjusted value*'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles*. ''*Class of motor vehicles*'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, HTSUS, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, HTSUS, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 87.05 or 87.06, HTSUS;

(2) Motor vehicles classified under subheading 8701.10 or subheading 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS and motor vehicles classified under subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles classified under subheading 8703.21 through 8703.90, HTSUS;

(c) *Exporter*. ''*Exporter*'' means a person who exports goods from the territory of a Party;

(d) *Fungible goods or materials*. ''*Fungible goods or materials*'' means

goods or materials that are interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles*. ''*Generally Accepted Accounting Principles*'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good*. ''*Good*'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of the Parties*. ''*Goods wholly obtained or produced entirely in the territory of one or both of the Parties*'' means:

(1) Plants and plant products grown, and harvested or gathered, in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or both of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) extracted or taken from the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) A vessel that is registered or recorded with Korea and flying the flag of Korea; or

(ii) A vessel that is documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6), if such factory ship:

(i) Is registered or recorded with Korea and flies the flag of Korea; or

(ii) Is a vessel that is documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside the territory of one or both of the Parties, provided that Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (g)(1) through (g)(10) of this section, or from their derivatives, at any stage of production;

(h) *Material*. ''*Material*'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line*. ''*Model line*'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost*. ''*Net cost*'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs*. ''*Non-allowable interest costs*'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

(l) *Non-originating good or non-originating material*. ''*Non-originating good*'' or ''*non-originating material*'' means a good or material, as the case may be, that does not qualify as originating

under General Note 33, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment*. ''*Packing materials and containers for shipment*'' means the goods used to protect a good during its transportation to the United States and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''*Producer*'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production*. ''*Production*'' means growing, mining, harvesting, fishing, breeding, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate*. ''*Reasonably allocate*'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(q) *Reasonable suspicion of unlawful activity*. ''*Reasonable suspicion of unlawful activity*'' means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(1) Historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;

(2) Historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of the other Party;

(3) Historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws and regulations governing importations; or

(4) Other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request;

(r) *Recovered goods*. ''*Recovered goods*'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(s) *Remanufactured goods*. ''*Remanufactured goods*'' means goods classified in Chapter 84, 85, 87, or 90, or under heading 9402, HTSUS, that:

(1) Are entirely or partially comprised of recovered goods as defined in § 10.1013(r) and,

(2) Have a similar life expectancy and enjoy a factory warranty similar to such new goods;

(t) *Royalties*. ''*Royalties*'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(u) *Sales promotion, marketing, and after-sales service costs*. ''*Sales promotion, marketing, and after-sales service costs*'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and

professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(v) *Self-produced material*. ''*Self-produced material*'' means an originating material that is produced by a producer of a good and used in the production of that good;

(w) *Shipping and packing costs*. ''*Shipping and packing costs*'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(x) *Total cost*. ''*Total cost*'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(y) *Used*. ''*Used*'' means utilized or consumed in the production of goods; and

(z) *Value*. ''*Value*'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.1014 Originating goods.

Except as otherwise provided in this subpart and General Note 33(n), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the UKFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 33(o), HTSUS, and the good satisfies all other applicable requirements of General Note 33, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 33(o), HTSUS, and satisfies all other applicable requirements of General Note 33, HTSUS; or

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

§ 10.1015 Regional value content.

(a) *General*. Except for goods to which paragraph (d) of this section applies, where General Note 33, HTSUS, sets

forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials, other than indirect materials, that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials, other than indirect materials, that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 33, HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials, other than indirect materials, that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions set out in Generally Accepted Accounting Principles, applicable in the territory of the Party where the good is produced, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor

vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories*. The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General*. For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (B) of this section for automotive goods that are exported to the territory of Korea or the United States.

(ii) *Duration of use*. A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.1016 Value of materials.

(a) *Calculating the value of materials*. Except as provided in § 10.1024 of this subpart, for purposes of calculating the regional value content of a good under General Note 33 HTSUS, and for purposes of applying the *de minimis* (*see* § 10.1018 of this subpart) provisions of General Note 33, HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material, i.e., in the same manner as for imported goods, with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All the costs incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples*. The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Korea purchases material x from an unrelated seller in Korea for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Korea ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant

whether material x was initially imported into Korea by the seller (or by anyone else). So long as the producer acquired material x in Korea, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Korea at or about the same time the goods were sold to the producer in Korea. Thus, if the seller of material x also sold an identical material to another buyer in Korea without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight (''cost of freight'' includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight (''cost of freight'' includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of a Party.

(d) *Accounting method.* Any cost or value referenced in General Note 33, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.1017 Accumulation.

(a) Originating goods or materials from the territory of one Party, incorporated into a good in the territory of the other Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.1014 of this subpart and all other applicable requirements of General Note 33, HTSUS.

§ 10.1018 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 33, HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 33, HTSUS; and

(3) The good meets all other applicable requirements of General Note 33, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 3, HTSUS, that is used in the production of a good classified in that Chapter;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids classified under subheadings 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(3) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, which is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; or

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS;

(4) A non-originating material provided for in Chapter 7, HTSUS that is used in the production of a good classified under the following subheadings: 0703.10, 0703.20, 0709.59, 0709.60, 0710.21 through 0710.80, 0711.90, 0712.20, 0712.39 through 0713.10 or 0714.20, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, or a non-originating rice product classified in Chapter 11, HTSUS that is used in the production of a good provided for under the headings 1006, 1102, 1103, 1104, HTSUS, or subheadings 1901.20 or 1901.90, HTSUS;

(6) A non-originating material provided for in heading 0805, HTSUS or subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for under subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for under subheadings 2106.90 or 2202.90, HTSUS;

(7) Non-originating peaches, pears, or apricots provided for in Chapters 8 or 20, HTSUS, that are used in the production of a good classified under heading 2008, HTSUS;

(8) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good classified under headings 1501 through 1508, 1512, 1514, or 1515, HTSUS;

(9) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(10) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; or

(11) Except as provided in paragraphs (b)(1) through (10) of this section and General Note 33, HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or 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 General Note 33, HTSUS, will nevertheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed and finished in the territory of a Party.

(3) For purposes of this section, ''*wholly formed or finished*'' means when used in reference to fabrics, all production processes and finishing operations necessary to produce a finished fabric ready for use without further processing. These processes and operations include formation processes, such as weaving, knitting, needling, tufting, felting, entangling, or other such processes, and finishing operations, including bleaching, dyeing, and printing. When used in reference to yarns, ''*wholly formed or finished*'' means all production processes and finishing operations, beginning with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheer into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

§ 10.1019 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of each fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''*inventory management method*'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.1020 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 33, HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.1015 of this subpart.

§ 10.1021 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 33, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed:

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.1022 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the UKFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 33, HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Korean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.1016(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* § 10.1015(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.1015(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.1023 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.1013(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 33, HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.1013(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Korean producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Korea. The shipping container is originating. The value of the shipping container determined under § 10.1016(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.1015(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.1024 Indirect materials.

An indirect material, as defined in § 10.1002(n) of this subpart, will be disregarded for the purpose of determining whether a good is originating.

Example. Korean Producer A produces good C using non-originating material B. Producer A imports non-originating rubber

gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.1014(b)(1) of this subpart and General Note 33, each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are disregarded for purposes of determining whether the good is originating.

§ 10.1025 Transit and transshipment.

(a) *General*. A good that has undergone production necessary to qualify as an originating good under §10.1014 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence*. An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.1026 Verification and justification of claim for preferential tariff treatment.

(a) *Verification*. A claim for preferential tariff treatment made under §10.1003(b) or §10.1011 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director finds a pattern of conduct, indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under UKFTA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Korea, to review the records of the type referred to in §10.1009(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles*. When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.1027 Special rule for verifications in Korea of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General*. For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of the Republic of Korea conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification*. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include suspending the liquidation of the entry of the textile or apparel good for which a claim

for preferential tariff treatment or a claim of origin has been made.

(3) *Actions following a verification.* If on completion of a verification under this paragraph, CBP makes a negative determination, or if CBP is unable to determine that a claim of origin for a textile or apparel good is accurate within 12 months after its request for a verification, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that the enterprise has provided insufficient or incorrect information to support the claim; and

(ii) Denying entry to the textile or apparel good for which a claim for preferential tariff treatment or a claim of origin has been made that is the subject of a verification, if CBP determines that the enterprise has provided insufficient or incorrect information to support the claim.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of the Republic of Korea conduct a verification, if CBP has a reasonable suspicion of unlawful activity relating to trade in textile or apparel goods by a person of Korea.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include suspending the liquidation of the entry of any textile or apparel good exported or produced by the enterprise subject to the verification.

(3) *Actions following a verification.* If on completion of a verification under this paragraph, CBP makes a negative determination, or if CBP is unable to determine that the person is complying with applicable customs measures affecting trade in textile or apparel goods within 12 months after its request for a verification, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided insufficient or incorrect information with respect to its obligations under the applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification, if CBP determines that the enterprise has provided insufficient or incorrect information with respect to its obligations under the applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods.

(c) *Action by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Korea, along with the competent authorities of Korea, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Korea to the United States.

(d) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment or deny entry to similar goods exported or produced by the enterprise that would have been the subject of the verification.

(e) *Continuation of appropriate action.* Before taking any action under paragraph (a) or (b), CBP will notify the government of the Republic of Korea. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section. CBP may make public the identity of a person that CBP has determined to be engaged in circumvention as provided under

this section or that has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

[77 FR 15948, Mar. 19, 2012, as amended at 78 FR 32358, May 30, 2013]

§ 10.1028 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 33, HTSUS, and in §§ 10.1013 through 10.1025 of this subpart, the legal basis for the determination.

§ 10.1029 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the UKFTA rules of origin set forth in General Note 33, HTSUS, CBP may suspend preferential tariff treatment under the UKFTA to entries of identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 33, HTSUS.

PENALTIES

§ 10.1030 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related U.S. laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the U.S. laws and regulations relating to the UKFTA.

§ 10.1031 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.1003(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.1032 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.1009(b) with respect to the making of an incorrect certification.

§ 10.1033 Framework for correcting claims or certifications.

(a) *''Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise

processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.1034 Goods re-entered after repair or alteration in Korea.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Korea as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Korea, regardless of whether the repair or alteration could be performed in the United States or has increased the value of the good and regardless of their origin, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Korea, are incomplete for their intended use and for which the processing operation performed in Korea constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of § 10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Korea after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart S—United States-Panama Trade Promotion Agreement

SOURCE: 78 FR 63056, Oct. 23, 2013, unless otherwise noted.

GENERAL PROVISIONS

§ 10.2001 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Panama Trade Promotion Agreement (the PANTPA) signed on June 28, 2007, and under the United States-Panama Trade Promotion Agreement Implementation Act (''the Act''), Public Law 112–43, 125 Stat. 497 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the PANTPA and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.2002 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the PANTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin*. ''Claim of origin'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs authority*. ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(f) *Days*. ''Days'' means calendar days;

(g) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *Enterprise of a Party*. ''Enterprise of a Party'' means an enterprise constituted or organized under a Party's law;

(i) *Goods of a Party*. ''Goods of a Party'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

(j) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(k) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Identical goods*. ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(o) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in Article 3.25 (Rules of Origin and Related Matters) or Chapter Four (Rules of Origin and Origin Procedures) of the PANTPA, and General Note 35, HTSUS;

(p) *Party*. ''Party'' means the United States or Panama;

(q) *Person*. ''Person'' means a natural person or an enterprise;

(r) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the PANTPA to an originating good, and an exemption from the merchandise processing fee;

(s) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3.30 of the PANTPA;

(u) *Territory*. ''Territory'' means:

(1) With respect to Panama, the land, maritime, and the air space under Panama's sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(v) *WTO*. ''WTO'' means the World Trade Organization; and

(w) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.2003 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for PANTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on either:

(1) A written or electronic certification, as specified in § 10.2004, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''PA'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.2031 and 10.2033).

§ 10.2004 Certification.

(a) *General*. An importer who makes a claim pursuant to § 10.2003(b) based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of

the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone number, and email address of the certifying person;

(ii) If not the certifying person, the legal name, address, telephone number, and email address of the importer of record, the exporter, and the producer of the good, if known;

(iii) The legal name, address, telephone number, and email address of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 35, HTSUS;

(vi) The applicable rule of origin set forth in General Note 35, HTSUS, under which the good qualifies as an originating good;

(vii) Date of certification; and

(viii) In case of a blanket certification issued with respect to multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of certification, the period that the certification covers; and

(4) Must include a statement, in substantially the following form:

''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 these representations;

The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Panama Trade Promotion Agreement; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent*. The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer*. (1) A certification may be prepared by the exporter or producer of the good on the basis of:

(i) The exporter's or producer's knowledge that the good is originating; or

(ii) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(2) The port director may not require an exporter or producer to provide a written or electronic certification to another person.

(e) *Applicability of certification*. The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification*. A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was issued.

§ 10.2005 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.2003(b):

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the PANTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.2004; and

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties*. An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* § 10.2031 through 10.2033).

§ 10.2006 Certification not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.2004 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.2004, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.2007 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.2003(b) based on either the importer's certification or its knowledge must maintain, for a minimum of five years after the date of importation of the good, all records and documents necessary to demonstrate that the good qualifies for preferential tariff treatment under the PANTPA. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.2003(b) based on the certification issued by the exporter or producer must maintain, for a minimum of five years after the date of importation of the good, the certification issued by the exporter or producer. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

(b) *Method of maintenance*. The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.2008 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General*. If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.2004 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the PANTPA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.2025(a) were met.

EXPORT REQUIREMENTS

§ 10.2009 Certification for goods exported to Panama.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Panama must provide a copy of the certification (written or electronic) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Panama and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.2032 and 10.2033).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Panama must maintain, for a period of at least five years after the date the certification was issued, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c)(1) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.2010 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.2011. Subject to the provisions of § 10.2008, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.2012(c).

§ 10.2011 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed. The post-importation claim may be filed by paper or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification prepared in accordance with § 10.2004 if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.2012 CBP processing procedures.

(a) *Status determination*. After receipt of a post-importation claim pursuant to § 10.2011, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review*. If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed pursuant to § 10.2011 until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed pursuant to § 10.2011 until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry*. If the port director determines that a claim for a refund filed pursuant to § 10.2011 should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the port director determines that a claim for a refund filed pursuant to § 10.2011 should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund pursuant to § 10.2011.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.2011 if the claim was not filed timely, if the importer has not complied with the requirements of §§ 10.2008 and 10.2011, or if, following an origin verification under § 10.2026, the port director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.2026.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.2013 Definitions.

For purposes of §§ 10.2013 through 10.2025:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (o) of this section;

(b) *Class of motor vehicles.* ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS;

(2) Motor vehicles classified under subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS, or motor vehicles classified under subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles classified under subheadings 8703.21 through 8703.90, HTSUS;

(c) *Enterprise.* ''Enterprise'' means an enterprise as defined in § 10.2002(g), and includes an enterprise involved in:

(1) Production, processing, or manipulation of textile or apparel goods in the territory of Panama, including in any free trade zone, foreign trade zone, or export processing zone;

(2) Importation of textile or apparel goods into the territory of Panama, including into any free trade zone, foreign trade zone, or export processing zone; or

(3) Exportation of textile or apparel goods from the territory of Panama, including from any free trade zone, foreign trade zone, or export processing zone;

(d) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(e) *Fungible good or material.* ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(f) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application, as well as detailed standards, practices, and procedures;

(g) *Good.* ''Good'' means any merchandise, product, article, or material;

(h) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or both of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (h)(1) through (h)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Panama and flying its flag; or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in

paragraph (h)(6) of this section, if such factory ships are:

(i) Registered or recorded with Panama and flying its flag; or

(ii) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (h)(1) through (h)(10) of this section, or from the derivatives of such goods, at any stage of production;

(i) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other good that is not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production;

(j) *Material.* ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(k) *Model line.* ''Model line'' means a group of motor vehicles having the same platform or model name;

(l) *Net cost.* ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(m) *Non-allowable interest costs.* ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(n) *Non-originating good or non-originating material.* ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 35, HTSUS, or this subpart;

(o) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(p) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(q) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(r) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(s) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(t) *Remanufactured good.* ''Remanufactured good'' means a good classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods as defined in paragraph (s) of this section; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to such a good that is new;

(u) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(v) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(w) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(x) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(y) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties.

Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(z) *Used*. ''Used'' means utilized or consumed in the production of goods; and

(aa) *Value*. ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.2014 Originating goods.

Except as otherwise provided in this subpart and General Note 35, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the PANTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 35, HTSUS, and the good satisfies all other applicable requirements of General Note 35, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 35, HTSUS, and satisfies all other applicable requirements of General Note 35, HTSUS; or

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

§ 10.2015 Regional value content.

(a) *General*. Except for goods to which paragraph (d) of this section applies, where General Note 35, HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method*. Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method*. Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General*. Where General Note 35, HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or any of headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraphs (d)(2) through (d)(4) of this section.

(2) *Net cost method*. Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where

RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Panama or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.2016 Value of materials.

(a) *Calculating the value of materials.* For purposes of calculating the regional value content of a good under General Note 35, HTSUS, and for purposes of applying the *de minimis* (*see* § 10.2018) provisions of General Note 35, HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, i.e., in the same manner as for imported goods, with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Panama purchases material x from an unrelated seller in Panama for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Panama ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Panama by the seller (or by anyone else). So long as the producer acquired material x in Panama, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Panama at or about the same time the goods were sold to the producer in Panama. Thus, if the seller of material x also sold an identical material to another buyer in Panama without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of

the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 35, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.2017 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.2014 and all other applicable requirements of General Note 35, HTSUS.

§ 10.2018 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 35, HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 35, HTSUS; and

(3) The good meets all other applicable requirements of General Note 35, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, which is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; or

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS;

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production

of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, that is used in the production of a good provided for in heading 1102 or 1103 or subheading 1904.90, HTSUS;

(6) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(7) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(8) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; or

(9) Except as provided in paragraphs (b)(1) through (b)(8) of this section and General Note 35, HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or 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 General Note 35, HTSUS, will nevertheless be considered to be an originating good if:

(i) 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; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00 or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed and finished in the territory of a Party. For purposes of this paragraph, ''wholly formed and finished'' means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

§ 10.2019 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.2020 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if

the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 35, HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.2015.

§ 10.2021 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 35, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.2022 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the PANTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 35, HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Panamanian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.2016(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC=((AV–VNM)/AV) × 100 (*see* § 10.2015(b)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC=(VOM/AV) × 100 (*see* § 10.2015(c)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.2023 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.2013(o), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 35, HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in

§ 10.2013(o), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Panamanian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Panama. The shipping container is originating. The value of the shipping container determined under § 10.2016(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC= (VOM/AV) × 100 (*see* § 10.2015(c))), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.2024 Indirect materials.

An indirect material, as defined in § 10.2013(i), will be considered to be an originating material without regard to where it is produced.

Example. Panamanian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.2014(b)(1) and General Note 35, each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.2025 Transit and transshipment.

(a) *General*. A good that has undergone production necessary to qualify as an originating good under § 10.2014 will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence*. An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.2026 Verification and justification of claim for preferential tariff treatment.

(a) *Verification*. A claim for preferential tariff treatment made under § 10.2003(b) or § 10.2011, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the port director finds a pattern of conduct, indicating that an importer, exporter, or producer has provided false

or unsupported declarations or certifications, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under PANTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Panama, to review the records of the type referred to in §10.2009(c)(1) or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§10.2027 Special rule for verifications in Panama of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Panama conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Panama conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient or incorrect information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Action by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Panama, along with the competent authorities of Panama, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Panama to the United States.

(d) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny entry of textile or apparel goods produced or exported by the enterprise.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.2028 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 35, HTSUS, and in §§ 10.2013 through 10.2025, the legal basis for the determination.

§ 10.2029 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the PANTPA rules of origin set forth in General Note 35, HTSUS, CBP may suspend preferential tariff treatment under the PANTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of

that person are in conformity with General Note 35, HTSUS.

PENALTIES

§ 10.2030 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the PANTPA.

§ 10.2031 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.2003(c) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.2032 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.2009(b) with respect to the making of an incorrect certification.

§ 10.2033 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily*'' *defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of Appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for

the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.2034 Goods re-entered after repair or alteration in Panama.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Panama as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Panama, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repair or alteration'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. The term ''repair or alteration'' does not include an operation or process that transforms an unfinished good into a finished good.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Panama, are incomplete for their intended use and for which the processing operation performed in Panama constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Panama after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart T—United States-Colombia Trade Promotion Agreement

SOURCE: 77 FR 59069, Sept. 26, 2012, unless otherwise noted.

GENERAL PROVISIONS

§ 10.3001 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Colombia Trade Promotion Agreement (the CTPA) signed on November 22, 2006, and under the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act''), Public Law 112–42, 125 Stat. 462 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the CTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.3002 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the CTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs authority*. ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(f) *Days*. ''Days'' means calendar days;

(g) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *Enterprise of a Party*. ''Enterprise of a Party'' means an enterprise constituted or organized under a Party's law;

(i) *Goods of a Party*. ''Goods of a Party'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party.

(j) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(k) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Identical goods*. ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(o) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in Article 3.3 (Textiles and Apparel) or Chapter Four (Rules of Origin and Origin Procedures) of the CTPA, and General Note 34, HTSUS;

(p) *Party*. ''Party'' means the United States or Colombia;

(q) *Person*. ''Person'' means a natural person or an enterprise;

(r) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the CTPA to an originating good, and an exemption from the merchandise processing fee;

(s) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3–C of the CTPA;

(u) *Territory*. ''Territory'' means:

(1) With respect to Colombia, in addition to its continental territory, the archipelago of San Andrés, Providencia and Santa Catalina, the islands of Malpelo, and all the other islands, islets, keys, headlands and shoals that belong to it, as well as air space and the maritime areas over which Colombia has sovereignty or sovereign rights or jurisdiction in accordance with its domestic law and international law, including applicable international treaties; and

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(v) *WTO*. ''WTO'' means the World Trade Organization; and

(w) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.3003 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for CTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on either:

(1) A written or electronic certification, as specified in § 10.3004, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''CO'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.3031 and 10.3033).

§ 10.3004 Certification.

(a) *General*. An importer who makes a claim pursuant to § 10.3003(b) based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone number, and email address of the certifying person;

(ii) If not the certifying person, the legal name, address, telephone number, and email address of the importer of record, the exporter, and the producer of the good, if known;

(iii) The legal name, address, telephone number, and email address of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 34, HTSUS; and

(vi) The applicable rule of origin set forth in General Note 34, HTSUS, under which the good qualifies as an originating good;

(vii) Date of certification;

(viii) In case of a blanket certification issued with respect to multiple shipments of identical goods within any period specified in the written or

electronic certification, not exceeding 12 months from the date of certification, the period that the certification covers; and

(4) Must include a statement, in substantially the following form:

''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 these representations;

The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Colombia Trade Promotion Agreement; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent*. The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer*. (1) A certification may be prepared by the exporter or producer of the good on the basis of:

(i) The exporter's or producer's knowledge that the good is originating; or

(ii) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(2) The port director may not require an exporter or producer to provide a written or electronic certification to another person.

(e) *Applicability of certification*. The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification*. A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was issued

§ 10.3005 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.3003(b):

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the CTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.3004; and

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties*. An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* §§ 10.3031 through 10.3033).

§ 10.3006 Certification not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section,

an importer will not be required to submit a copy of a certification under § 10.3004 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.3004, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.3007 Maintenance of records.

(a) *General*. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.3003(b) based on either the importer's certification or its knowledge must maintain, for a minimum of five years after the date of importation of the good, all records and documents necessary to demonstrate that the good qualifies for preferential tariff treatment under the CTPA. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.3003(b) based on the certification issued by the exporter or producer must maintain, for a minimum of five years after the date of importation of the good, the certification issued by the exporter or producer. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance*. The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

[77 FR 59069, Sept. 26, 2012, as amended at 78 FR 60193, Oct. 1, 2013]

§ 10.3008 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General*. If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.3004 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the CTPA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.3025(a) were met.

EXPORT REQUIREMENTS

§ 10.3009 Certification for goods exported to Colombia.

(a) *Submission of certification to CBP*. Any person who completes and issues a certification for a good exported from the United States to Colombia must provide a copy of the certification (written or electronic) to CBP upon request.

(b) *Notification of errors in certification*. Any person who completes and issues a certification for a good exported from the United States to Colombia and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.3032 and 10.3033).

(c) *Maintenance of records*—(1) *General*. Any person who completes and issues a certification for a good exported from the United States to Colombia must maintain, for a period of

at least five years after the date the certification was issued, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.3010 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.3011. Subject to the provisions of § 10.3008, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.3012(c).

§ 10.3011 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed. The post-importation claim may be filed by paper or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification prepared in accordance with § 10.3004 if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

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§ 10.3012 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim made pursuant to § 10.3011, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.3011 until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.3011 until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry*. If the port director determines that a claim for a refund filed under § 10.3011 should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the port director determines that a claim for a refund filed under § 10.3011 should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.3011.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.3011 if the claim was not filed timely, if the importer has not complied with the requirements of § 10.3008 and 10.3011, or if, following an origin verification under § 10.3026, the port director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.3026.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.3013 Definitions.

For purposes of §§ 10.3013 through 10.3025:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (n) of this section;

(b) *Class of motor vehicles*. ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under 8702.10 or 8702.90, HTSUS, and motor vehicles classified under subheading under 8702.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706;

(2) Motor vehicles classified under subheading 8701.10 or subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS, and motor vehicles of subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles classified under subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material*. ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially

identical to such other good or material;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or both of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Colombia and flying its flag; or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6) of this section, if such factory ships are:

(i) Registered or recorded with Colombia and fly its flag; or

(ii) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Indirect Material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other good that is not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production.

(i) *Material.* ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(j) *Model line*. ''Model line'' means a group of motor vehicles having the same platform or model name;

(k) *Net cost*. ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(l) *Non-allowable interest costs*. ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(m) *Non-originating good or non-originating material*. ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 34, HTSUS, or this subpart;

(n) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(o) *Producer*. ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(p) *Production*. ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(q) *Reasonably allocate*. ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(r) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(s) *Remanufactured good*. ''Remanufactured good'' means an industrial good assembled in the territory of one or both of the Parties that is classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods as defined in paragraph (r) of this section; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to such new goods;

(t) *Royalties*. ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(u) *Sales promotion, marketing, and after-sales service costs*. ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales

service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(v) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(w) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(x) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(y) *Used.* ''Used'' means utilized or consumed in the production of goods; and

(z) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

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§ 10.3014 Originating goods.

Except as otherwise provided in this subpart and General Note 34, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the CTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 34, HTSUS, and the good satisfies all other applicable requirements of General Note 34, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 34, HTSUS, and satisfies all other applicable requirements of General Note 34, HTSUS; or

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

§ 10.3015 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 34, HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must

be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method*. Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method*. Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General*. Where General Note 34, HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good shall be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method*. Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General*. For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories*. The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles,

produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Colombia or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.3016 Value of materials.

(a) *Calculating the value of materials.* For purposes of calculating the regional value content of a good under General Note 34, HTSUS, and for purposes of applying the *de minimis* (*see* § 10.3018) provisions of General Note 34, HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material, i.e., in the same manner as for imported goods, with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Colombia purchases material x from an unrelated seller in Colombia for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Colombia ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Colombia by the seller (or by anyone else). So long as the producer acquired material x in Colombia, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the

producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Colombia at or about the same time the goods were sold to the producer in Colombia. Thus, if the seller of material x also sold an identical material to another buyer in Colombia without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight (''cost of freight'' includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 34, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

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§ 10.3017 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.3014 and all other applicable requirements of General Note 34, HTSUS.

§ 10.3018 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 34, HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any

applicable regional value content requirement for the good under General Note 34, HTSUS; and

(3) The good meets all other applicable requirements of General Note 34, HTSUS.

(b) *Exceptions*. Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, which is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; or

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS;

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in headings 1501 through 1508, HTSUS, or headings 1511 through 1515, HTSUS;

(6) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(7) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; or

(8) Except as provided in paragraphs (b)(1) through (b)(7) of this section and General Note 34, HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General*. Except as provided in paragraph (c)(2) of this section, a textile or 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 General Note 34, HTSUS, will nevertheless be considered to be an originating good if:

(i) 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; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns*. A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph,

''wholly formed'' means that all the production processes and finishing operations, starting with the extrusion of all filaments, strips, films, or sheets, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

§ 10.3019 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.3020 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 34, HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.3015.

§ 10.3021 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 34, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.3022 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the CTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 34, HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Colombian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in §10.3016(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC=((AV–VNM)/AV) × 100 (*see* §10.3015(b)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC=(VOM/AV) × 100 (*see* §10.3015(c)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.3023 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in §10.3013(n), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 34, HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in §10.3013(n), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Colombian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Colombia. The shipping container is originating. The value of the shipping container determined under section §10.3016(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC=(VOM/AV) × 100 (*see* §10.3015(c)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100-$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.3024 Indirect materials.

An indirect material, as defined in §10.3013(h), will be considered to be an originating material without regard to where it is produced.

Example. Colombian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.3014(b)(1) and General Note 34, each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.3025 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under §10.3014 will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.3026 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10.3003(b) or § 10.3011, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the port director finds a pattern of conduct, indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under CTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Colombia, to review the records of the type referred to in § 10.3009(c)(1) or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.3027 Special rule for verifications in Colombia of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Colombia conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that a person has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the person has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Colombia conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information, or that the person has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(c) *Action by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Colombia, along with the competent authorities of Colombia, to the premises of an exporter, producer, or any other person involved in the movement of textile or apparel goods from Colombia to the United States.

(d) *Denial of permission to conduct a verification.* If a person does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the person that would have been the subject of the verification.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

[77 FR 59069, Sept. 26, 2012, as amended at 78 FR 60193, Oct. 1, 2013]

§ 10.3028 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for

preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 34, HTSUS, and in §§ 10.3013 through 10.3025, the legal basis for the determination.

§ 10.3029 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the CTPA rules of origin set forth in General Note 34, HTSUS, CBP may suspend preferential tariff treatment under the CTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 34, HTSUS.

PENALTIES

§ 10.3030 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the CTPA.

§ 10.3031 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.3003(c) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.3032 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.3009(b) with respect to the making of an incorrect certification.

§ 10.3033 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily*'' *defined*. Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud*. Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims*. An importer who makes one or more incorrect claims after becoming aware that

a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.3034 Goods re-entered after repair or alteration in Colombia.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Colombia as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Colombia, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. The term ''repairs or alterations'' does not include an operation or process that transforms an unfinished good into a finished good.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Colombia, are incomplete for their intended use and for which the processing operation performed in Colombia constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Colombia after having been exported for repairs or alterations and which are claimed to be duty free.

[77 FR 59069, Sept. 26, 2012, as amended at 78 FR 60193, Oct. 1, 2013]

PART 11—PACKING AND STAMPING; MARKING

PACKING AND STAMPING

Sec.
11.1 Cigars, cigarettes, medicinal preparations, and perfumery.
11.2 Manufactured tobacco.
11.2a Release from Customs custody without payment of tax on cigars, cigarettes and cigarette papers and tubes.