

U.S. Customs and Border Protection

CBP Decisions

RE-APPROVAL OF CERTISPEC SERVICES USA, INC., AS A COMMERCIAL GAUGER

[CBP Dec. 07-30]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Certispec Services USA, Inc., of Texas City, Texas, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Certispec Services USA, Inc., 1448 Texas Avenue, Texas City, Texas 77590, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity for gauger services should request and receive written assurances from the entity that it is approved by the Bureau of Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger services this entity is approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Certispec Services USA, Inc., as a commercial gauger became effective on October 19, 2005. The next triennial inspection date will be scheduled for October 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF CHEMICAL
AND PETROCHEMICAL INSPECTIONS, LL.P., AS A
COMMERCIAL GAUGER AND LABORATORY**

[CBP Dec. 07-31]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Chemical and Petrochemical Inspections, LL.P., of Groves, Texas as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Chemical and Petrochemical Inspections, LL.P., 5300 39th Street, Groves, Texas 77619, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Chemical and Petrochemical Inspections, LL.P., as a commercial gauger and laboratory became effective on April 6, 2006. The next triennial inspection date will be scheduled for April 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breau, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF COLUMBIA
INSPECTION AS A COMMERCIAL GAUGER AND
LABORATORY**

[CBP Dec. 07-32]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Columbia Inspection of San Pedro, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Columbia Inspection, 797 Channel Street, San Pedro, California 90731, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Columbia Inspection as a commercial gauger and laboratory became effective on July 11, 2006. The next triennial inspection date will be scheduled for July 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION OF DIXIE SERVICES, INC., AS A
COMMERCIAL LABORATORY**

[CBP Dec. 07-33]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-accreditation of Dixie Services, Inc., of Galena Park, Texas, as an accredited commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Dixie Services, Inc., 1706 First Street, Galena Park, Texas 77547, has been re-accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analysis should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific tests this entity is accredited to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-accreditation of Dixie Services, Inc., as an accredited laboratory became effective on October 4, 2006. The next triennial inspection date will be scheduled for October 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF
INSPECTORATE AMERICA CORPORATION AS A
COMMERCIAL GAUGER AND LABORATORY**

[CBP Dec. 07-34]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corporation of Pasadena, Texas, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Inspectorate America Corporation, 131 Pasadena Boulevard, Pasadena, Texas 77506, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Inspectorate America Corporation as a commercial gauger and laboratory became effective on September 8, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-APPROVAL OF INSPECTORATE AMERICA
CORPORATION AS A COMMERCIAL GAUGER**

[CBP Dec. 07-35]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corporation of Searsport, Maine, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 178 Mortland Road, Searsport, Maine 04974, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR

151.13. Anyone wishing to employ this entity for gauger services should request and receive written assurances from the entity that it is approved by the Bureau of Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger services this entity is approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Inspectorate Amercia Corporation as a commercial gauger became effective on May 17, 2006. The next triennial inspection date will be scheduled for May 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF
INSPECTORATE AMERICA CORPORATION AS A
COMMERCIAL GAUGER AND LABORATORY**

[CBP Dec. 07-36]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corporation of South Portland, Maine, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Inspectorate America Corporation, 33 Rigby Road, South Portland, Maine 04106, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the spe-

cific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Inspectorate America Corporation as a commercial gauger and laboratory became effective on May 16, 2006. The next triennial inspection date will be scheduled for May 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF INTERTEK
U.S.A., INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

[CBP Dec. 07-37]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Intertek U.S.A., Inc., of Gonzales, Louisiana as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Intertek U.S.A., Inc., 2632 Ruby Avenue, Gonzales, Louisiana 70737, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Intertek U.S.A., Inc., as a commercial gauger and laboratory became effective on May 3, 2005. The next triennial inspection date will be scheduled for May 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF INTERTEK
USA, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

[CBP Dec. 07-38]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Intertek USA, Inc., of South Portland, Maine, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Intertek USA, Inc., 78 Pleasant Avenue, South Portland, Maine 04106, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Intertek USA, Inc., as a commercial gauger and laboratory became effective on May 15, 2006. The next triennial inspection date will be scheduled for May 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF INTERTEK
USA, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

[CBP Dec. 07-39]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Intertek USA, Inc., of Texas City, Texas as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Intertek USA, Inc., 101 20th Street South, Texas City, Texas 77590, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Intertek USA, Inc., as a commercial gauger and laboratory became effective on September 27, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services,

10 CUSTOMS BULLETIN AND DECISIONS, VOL. 41, NO. 29, JULY 12, 2007

Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION OF MARKAN LABORATORIES, INC.,
AS A COMMERCIAL LABORATORY**

[CBP Dec. 07-40]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-accreditation of Markan Laboratories, Inc., of New York, New York, as an accredited commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Markan Laboratories, Inc., 5 Hanover Street, New York, New York 10004, has been re-accredited to test sugar, sugar syrups and confectionary products under Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS) for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analysis should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific tests this entity is accredited to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-accreditation of Markan Laboratories, Inc., as an accredited laboratory became effective on February 15, 2005. The next triennial inspection date will be scheduled for February 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-ACCREDITATION AND RE-APPROVAL OF SAYBOLT,
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

[CBP Dec. 07-41]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Saybolt, Inc., of Pasadena, Texas, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Saybolt, Inc., 3113 Red Bluff Road, Pasadena, Texas 77503, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Saybolt, Inc., as a commercial gauger and laboratory became effective on September 6, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**RE-APPROVAL OF SGS NORTH AMERICA, INC., AS A
COMMERCIAL GAUGER**

[CBP Dec. 07-42]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of SGS North America, Inc., of Baytown, Texas, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., Contractor's Row East, ExxonMobil Refinery, Baytown, Texas 77520, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity for gauger services should request and receive written assurances from the entity that it is approved by the Bureau of Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger services this entity is approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of SGS North America, Inc., as a commercial gauger became effective on February 17, 2005. The next triennial inspection date will be scheduled for February 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 163, and 178

USCBP-2007-0062

CBP Dec. 07-43

RIN 1505-AB82

**HAITIAN HEMISPHERIC OPPORTUNITY THROUGH
PARTNERSHIP ENCOURAGEMENT ACT OF 2006**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments. **SUMMARY:** This document amends the U.S. Customs and Border Protection (“CBP”) regulations on an interim basis to implement the duty-free provisions of the Haitian Hemispheric Opportunity through Partnership Encouragement (“HOPE”) Act of 2006.

DATES: Interim rule effective June 20, 2007; Comments must be received by August 18, 2007.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2007-0062.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington,

D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of International Trade, (202) 344-1959. Non-textile Operational Aspects: Lori Whitehurst, Office of International Trade, (202) 344-2722.

Legal Aspects: Cynthia Reese, Office of International Trade, (202) 572-8812, or Alexandra Kalb, Office of International Trade, (202) 572-8791.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these regulations will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. See ADDRESSES above for information on how to submit comments.

Background

On December 20, 2006, the President signed into law the Tax Relief and Health Care Act of 2006 (“the Act”), Public Law 109-432, 120 Stat. 2922. Title V of the Act concerns the extension of certain trade benefits to Haiti and is referred to in the Act as the “Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006” (the “HOPE Act”).

Section 5002 of the Act amended the Caribbean Basin Economic Recovery Act (the CBERA, also referred to the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701-2707) by adding a new § 213A, entitled “Special Rules for Haiti” and codified at 19 U.S.C. 2703A, to authorize the President to extend additional trade benefits to Haiti for a five-year period (ending on December 19, 2011) if the President determines that the country meets certain specified eligibility conditions and requirements. New § 213A of the CBERA consists of six principal subsections, each of which is summarized below.

Subsection (a) of § 213A of the CBERA sets forth definitions of several terms used in § 213A, including “applicable one-year period,” which is used in connection with apparel articles described in paragraph (b)(2) of § 213A, and “enter; entry”.

Subsection (b) of § 213A specifies the conditions and requirements that must be met for certain apparel articles from Haiti to receive duty-free treatment. The apparel articles that may receive duty-free treatment under this subsection if they are imported directly from Haiti are as follows:

1. 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, provided a specified value-content requirement is met during an applicable one-year period, either on the basis of individual entries or an annual aggregation calculation, and subject to the application of annual quantitative limits expressed in square meter equivalents for each of the five applicable one-year periods [paragraphs (1) and (2) of subsection (b)];

2. Apparel articles classifiable in Chapter 62 of the Harmonized Tariff Schedule of the United States (“HTSUS”) (certain woven apparel articles), other than articles classifiable in subheading 6212.10 of the HTSUS (brassieres), as in effect on December 20, 2006, that are wholly assembled or knit-to-shape in Haiti but do not qualify for duty-free treatment under paragraphs (1) and (2) of subsection (b) because they fail to meet the applicable value-content requirement, with duty-free treatment for such articles ending on December 19, 2009, and subject to the application of annual quantitative limits in addition to the quantitative limits that apply to apparel articles under paragraphs (1) and (2) of subsection (b) [paragraph (4) of subsection (b)]; and

3. Articles classifiable in heading 6212.10 of the HTSUS (brassieres) that are both cut and sewn or otherwise assembled in Haiti or the United States, or both, without regard to the source of the fabric or components from which the articles are made, subject to the application of the quantitative limits that apply to apparel articles under paragraphs (1) and (2) of subsection (b) [paragraph (5) of subsection (b)].

Paragraph (3) of subsection (b) sets forth the quantitative limits that apply during each of the five applicable one-year periods with respect to apparel articles of a producer or entity controlling production under paragraphs (1) and (2) of subsection (b).

Subsection (c) of § 213A of the CBERA provides for the duty-free treatment of any article classifiable in subheading 8544.30.00 of the HTSUS (wiring sets), as in effect on December 20, 2006, that is the product or manufacture of Haiti and is imported directly from Haiti into the customs territory of the United States, provided a specified value-content requirement is met.

Subsection (d) of new § 213A sets forth certain eligibility requirements that Haiti must meet as a prerequisite for articles to receive duty-free treatment under this section. This subsection requires that

the President determine whether Haiti meets these requirements within 90 days after the date of enactment of the HOPE Act (or by March 20, 2007).

Subsection (e) of § 213A provides that preferential tariff treatment for apparel articles under this section shall not apply unless the President certifies to Congress that Haiti is meeting certain conditions, such as the adoption of an effective visa system, that are primarily intended to avoid illegal transshipment situations.

Subsection (f) of § 213A provides that the President shall issue regulations to carry out this section not later than 180 days after the date of enactment of the HOPE Act. As the HOPE Act was signed on December 20, 2006, implementing regulations are due by June 20, 2007. Section 213A(f) further provides that the President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate in preparing such regulations. CBP has consulted with the Committee on Way and Means and the Committee on Finance regarding these implementing regulations.

On March 19, 2007, the President signed Proclamation 8114 to implement the provisions of the HOPE Act, among other purposes. The Proclamation, which was published in the **Federal Register** on March 22, 2007 (72 FR 13655), included determinations by the President that Haiti (1) meets the eligibility requirements set forth in § 213A(d) of the CBERA and (2) is meeting the conditions set forth in § 213A(e). The Proclamation also modified subchapter XX of Chapter 98 of the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annex 1 to the Proclamation. The modifications to the HTSUS included the creation of new subheadings encompassing the various articles that are eligible for duty-free treatment under the HOPE Act.

The HOPE Act provisions that require implementation through regulation include subsections (a) through (c) of § 213A of the CBERA. In order to provide transparency and facilitate their use, the implementing regulations set forth in this interim rulemaking have been included within new Subpart O in Part 10 of the CBP regulations (Title 19 Code of Federal Regulations). The regulatory amendments are discussed below in the order in which they appear in this document.

Discussion of Amendments

Part 10, Subpart O

Section 10.841 outlines the statutory context for Subpart O, Part 10 and is self-explanatory.

Section 10.842 sets forth definitions of various terms used in Subpart O, Part 10. Although certain of the definitions in this section are based on definitions contained in the HOPE Act, other defini-

tions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart O, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Section 10.843 identifies the articles to which duty-free treatment applies under new § 213A of the CBERA and includes any required production standards.

Section 10.844 sets forth the basic conditions and requirements that apply for purposes of meeting the applicable value-content requirements for apparel articles of a producer or entity controlling production, as described in paragraph (b)(2) of § 213A, and for wiring sets, as described in subsection (c) of the statute.

Paragraph (a)(1) of § 10.844, which is based on subparagraphs (b)(2)(A) and (b)(2)(E)(i) of § 213A, concerns the value-content requirement for apparel articles, as described in paragraph (b)(2) of § 213A, of a producer or entity controlling production. Paragraph (a)(1) specifies that, except as provided in § 10.844(a)(2), individual entries of apparel articles will be eligible for duty-free treatment only if those meet the applicable value-content percentage for that year. The applicable percentage is 50 percent for each of the first three applicable one-year periods (December 20, 2006, through December 19, 2007, December 20, 2007, through December 19, 2008, and December 20, 2008, through December 19, 2009), 55 percent for the fourth applicable one-year period (December 20, 2009, through December 19, 2010), and 60 percent for the fifth applicable one-year period (December 20, 2010, through December 19, 2011). The value-content requirement is based upon a comparison between the sum of certain material and direct processing costs incurred in Haiti and one or more eligible countries (as specified in § 10.844(c)) and the declared customs value (appraised value) of the article.

Paragraph (a)(2) of § 10.844, which reflects paragraph (b)(2)(D) of § 213A, provides that the applicable value-content requirement for apparel articles of a producer or entity controlling production that are entered during an applicable one-year period may also be met on the basis of an annual aggregation calculation (as an alternative to meeting this requirement on an individual entry basis). Paragraph (a)(2) also reflects the statute's requirement that certain entries of apparel articles be excluded from the annual aggregation calculation, unless, in certain instances, the producer or entity controlling production elects to include those entries.

Paragraph (a)(3) of § 10.844 provides that the annual aggregation method elected to be used by a producer or entity controlling production for purposes of meeting the applicable value-content requirement must be consistently applied to all apparel articles of that producer or entity controlling production that are certified as being subject to the aggregation method during that applicable one-year period. This paragraph further provides that in the absence of an

election by the producer or entity controlling production to use the annual aggregation method in an applicable one-year period, all apparel articles of the producer or entity controlling production must be entered under the individual entry method during that applicable one-year period.

Paragraph (a)(4) of § 10.844, which is based in part on paragraph (b)(2)(F)(ii) of § 213A, sets forth the circumstances under which CBP will deny duty-free treatment to apparel articles of a producer or entity controlling when the requirements for such treatment are not met in an applicable one-year period. Paragraph (a)(4) also provides for the application of an increased value-content percentage requirement as a consequence of apparel articles of a producer or entity controlling production for which a duty-free claim has been made failing to meet the requirements for duty-free treatment in an applicable one-year period, or of a producer or entity controlling production entering into the duty-free program after the initial applicable one-year period and electing to use the annual aggregation method. In situations in which apparel articles are required to meet the increased value-content percentage in an applicable one-year period, paragraph (a)(4) provides that the importer of such articles must notify CBP that the increased percentage has been met by submitting a declaration of compliance.

Paragraph (a)(5) of § 10.844 implements paragraph (b)(2)(G) of § 213A relating to the inclusion of the cost of certain fabrics or yarns in short supply in the value-content requirement for apparel articles of a producer or entity controlling production.

Paragraph (b) of § 10.844, which is derived from paragraph (c) of § 213A, sets forth the value-content requirement that must be met for wiring sets from Haiti to receive duty-free treatment.

Paragraph (c) of § 10.844 reflects the definition of “countries” found in paragraph (b)(2)(C) of § 213A, as used in the value-content requirements for apparel articles of a producer or entity controlling production and wiring sets.

Paragraph (d) of § 10.844 concerns the cost or value of materials that may be applied toward meeting the value-content requirements for apparel articles of a producer or entity controlling production and for wiring sets (see paragraphs (b)(2)(A)(i) and (c)(1)(A) of § 213A). Paragraph (d)(1) defines the term “materials produced in Haiti or one or more eligible countries”, as used in the value-content requirement for apparel articles of a producer or entity controlling production, based upon the rules for determining the country of origin of apparel articles set forth in § 102.21 of the CBP regulations (19 CFR 102.21). The same term, as it is used in the value-content requirement for wiring sets, is defined in paragraph (d) in a manner similar to the approach taken in § 10.196(a) of CBP’s CBERA regulations.

Paragraph (d)(2) of § 10.844 relates to the calculation of the cost or value of materials for purposes of the value-content requirements

for apparel articles and wiring sets. Paragraph (d)(2)(i), which closely parallels § 10.196(c) of CBP's CBERA regulations, sets forth the cost elements to be included in the calculation of the cost or value of materials. Paragraph (d)(2)(ii), which relates only to the value-content requirement for apparel articles, implements paragraphs (b)(2)(B) and (b)(2)(D)(iii) of § 213A, by requiring a deduction for the cost or value of any "foreign materials," as defined in § 10.842(h) of these interim regulations and paragraph (b)(2)(E)(ii) of § 213A.

Paragraph (e) of § 10.844 implements paragraph (b)(2)(A)(ii) of § 213A by defining "direct costs of processing operations" as set forth in 19 U.S.C. 2703(a)(3).

Section 10.845 reflects paragraph (b)(2)(F)(iii) of § 213A relating to the requirements and procedures that apply for purposes of obtaining retroactive application of duty-free treatment for apparel articles of a producer or entity controlling production that (1) are ineligible for duty-free treatment during an applicable one-year period because the requirements for such treatment were not met during the preceding period, and (2) satisfy the increased value-content percentage in that applicable one-year period.

Section 10.846 defines the term "imported directly" based upon the manner in which the same term is defined in § 10.193 of CBP's CBERA regulations.

Section 10.847 sets forth the procedure for claiming duty-free treatment at the time of entry for articles eligible for such treatment under the HOPE Act. This section also provides that if an importer has reason to believe that a duty-free claim is incorrect, the importer must promptly correct the claim and pay any duties owing.

Section 10.848 provides that an importer claiming duty-free treatment for apparel articles, as described in paragraph (b)(2) of § 213A, that are entered in the aggregate during an applicable one-year period must 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. Section 10.848 also sets forth the consequences of failing to comply with this requirement, and describes the information that the declaration of compliance must include.

Section 10.849 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for duty-free treatment under Subpart O of Part 10, CBP regulations. This section also states that an importer who makes a claim for duty-free treatment is deemed to have certified that the article qualifies for such treatment.

Section 10.850 provides that a claim for duty-free treatment under Subpart O of Part 10, CBP regulations, will be subject to such verification as CBP deems necessary. This section also sets forth the circumstances under which CBP may deny a claim based on the results of the verification. Finally, this section specifies the types of records,

documents, and other information that CBP may review when verifying the statements and information included on a declaration of compliance.

Part 163

The Appendix to Part 163 of the CBP regulations (19 CFR Part 163), which sets forth a list of records and information required for the entry of merchandise (commonly known as the (a)(1)(A) list) has been modified to include the HOPE Act declaration of compliance.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility of articles for duty-free treatment under the HOPE Act.

Inapplicability of Notice and Delayed Effective Date Requirements

Under § 553 of the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, § 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to the public interest. CBP has determined that providing prior notice and public procedure for these interim regulations would be impracticable, unnecessary, and contrary to the public interest for the reasons explained below.

Pursuant to Annex 1 of Presidential Proclamation 8114 dated March 19, 2007 (72 FR 13655), the HOPE Act tariff benefits became effective for wiring units from Haiti that were entered, or withdrawn from warehouse for consumption, on or after January 4, 2007, and for certain apparel articles from Haiti that were entered, or withdrawn from warehouse for consumption, on or after March 20, 2007. An important function of these regulations is to assist importers in determining whether their merchandise satisfies the applicable production standards and complex value-content requirements that must be met to qualify for preferential tariff treatment under the HOPE Act. Given the Act’s complicated statutory scheme, this rulemaking assists in clarifying the applicable rules by providing definitions of numerous terms that are not defined in the statute and by providing illustrative examples regarding certain of these

rules. In addition, these amendments set forth the procedures that must be followed by importers to claim the benefits of tariff preference under the HOPE Act, including the specific information that must be submitted in connection with those claims, to ensure the timely and accurate processing of their claims by CBP as well as to protect the revenue against false claims. The interim regulations also inform importers of the types of records and information that may be the subject of a CBP verification.

As previously stated in the Background portion of this document, subsection (f) of § 213A of the CBERA (as added by § 5002 of the Act) provides that the President shall issue regulations to carry out this section not later than 180 days after the date of enactment of the HOPE Act (December 20, 2006). The good cause exception set forth in § 553(b)(B) of the APA applies when there is a statutorily imposed deadline combined with other relevant factors such as a complicated statutory scheme or a compelling need for rapid implementation of the regulation. In this case the statutorily imposed 180 day deadline in the HOPE Act, coupled with the complex statutory framework, constitute a recognized basis to invoke the good cause exception. In addition, CBP is soliciting comments in this interim rule and will consider all comments it receives before issuing a final rule.

Finally, §§ 553(d)(3) of the APA permit agencies to make a rule effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, or when the agency finds that good cause exists for dispensing with a delayed effective date. As these regulations implement the tariff preference provisions of the HOPE Act and thus grant an exemption from normal duty rates for qualifying articles, a delayed effective date is not required. Moreover, pursuant to § 553(d)(3) of the APA, for the reasons described above, CBP finds that good cause exists to make these regulations effective without a delayed effective date.

Executive Order 12866 and Regulatory Flexibility Act

This document does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993). In addition, because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the APA, as described above. For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0129.

The collections of information in these regulations are in § 10.847 (claim for duty-free treatment) and §§ 10.844(a)(4)(v) and 10.848 (declaration of compliance). This information is required in connection with certain claims for duty-free treatment under the HOPE Act and will be used by CBP to determine eligibility for preferential tariff treatment under that Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 1,333 hours.

Estimated average annual burden per respondent: 39.2 hours.

Estimated number of respondents: 34.

Estimated annual frequency of responses: 117.6.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Preference programs, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

1. The general authority citation for Part 10 continues to read, and the specific authority for new Subpart O is added, to read as follows:

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

* * * * *

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

2. Part 10, CBP regulations, is amended by adding a new Subpart O to read as follows:

Subpart O – Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006

Sec.

- 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 O – HAITIAN HEMISPHERIC OPPORTUNITY THROUGH PARTNERSHIP ENCOURAGEMENT ACT OF 2006

§ 10.841 Applicability.

Title V of Public Law 109–432, entitled the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE Act), amended the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) by adding a new § 213A (19 U.S.C. 2703A) to authorize the President to extend additional trade benefits to Haiti. 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 § 213A.

§ 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 § 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 of the components of the apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in Haiti; and

(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.

§ 10.843 Articles eligible for duty-free treatment.

The duty-free treatment referred to in § 10.841 applies to the following articles 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 (other than articles classifiable in subheading 6212.10 of the HTSUS), as in effect on December 20, 2006, that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, but do not qualify for duty-free treatment under paragraph (a) of this section because they fail to meet the applicable value-content requirement set forth in § 10.844(a) of this subpart, subject to the applicable quantitative limits set forth in U.S. Note 6(h), Subchapter XX, Chapter 98, HTSUS;

(c) Brassieres. Any article classifiable in subheading 6212.10 of the HTSUS, that is both cut and sewn or otherwise assembled in Haiti or the United States, or both, without regard to the source of the fabric or components from which the article is made, subject to the quantitative limits set forth in U.S. Note 6(g), Subchapter XX, Chapter 98, HTSUS; and

(d) 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;

§ 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 pe-

riod 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. (A) The entry of a woven apparel article receiving duty-free treatment under § 10.843(b) of this subpart is not to be included in an annual aggregation under paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(B) The entry of brassieres receiving duty-free treatment under § 10.843(c) is not to be included in an annual aggregation un-

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

(C) The entry of an apparel article that is wholly assembled or knit-to-shape in Haiti and that is receiving preferential tariff treatment under any provision of law other than § 213A of the CBERA (19 U.S.C. 2703A) or is subject to the rate of duty set forth in the "General" subcolumn of column 1 of the HTSUS is not to be included in an annual aggregation under paragraph (a)(2)(i) or (a)(2)(ii) of this section unless the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entry in the aggregation.

(3) Election to use the annual aggregation method for an applicable one-year period. A producer or entity controlling production that elects to use the annual aggregation method for purposes of meeting the applicable value-content requirement set forth in paragraph (a)(1) of this section during an applicable one-year period must continue to use that method for all apparel articles of that producer or entity controlling production that are certified as articles described in § 10.843(a) of this subpart during that applicable one-year period (see § 10.847(b) of this subpart). Unless a producer or entity controlling production elects to use the annual aggregation method with respect to an applicable one-year period, all apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under § 10.847(a) of this subpart must be entered under the individual entry method during that applicable one-year period.

(4) Failure to meet applicable requirements. (i) Initial applicable one-year period. 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 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. 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) 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.

(iv) Articles of a new producer or entity controlling production. A new producer or entity controlling production that elects 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)(iii) of this section as a prerequisite to receiving duty-free treatment during a 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 described in § 10.843(a) 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.

(v) 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)(iii) 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)(iv) 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 under the Bipartisan Trade Promotion Authority Act of 2002.

(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 under the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3801 et seq.); 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.

§ 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 woven 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; and

(5) Subheading 9820.85.44 for wiring sets described in § 10.843(d) 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.

§ 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, N.W., Washington, D.C. 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 § 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.

PART 163 – RECORDKEEPING

3. The authority citation for Part 163 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

4. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163–Interim (a)(1)(A) list.

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IV. * * *

§ 10.848 HOPE Act Declaration of Compliance

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PART 178 – APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

5. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

6. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
* * * * *	* * * * *	* * * * *
§§ 10.847 and 10.848.	Claim for duty-free treatment under the HOPE Act	1651 – 0129
* * * * *	* * * * *	* * * * *

* * * * *

DEBORAH J. SPERO,
*Acting Commissioner of Customs,
Customs and Border Protection.*

Approved: June 20, 2007

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register,

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 163, AND 178

USCBP-2007-0001

CBP Dec. 07- 50

RIN 1505-AB75

UNITED STATES – JORDAN FREE TRADE AGREEMENT

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends title 19 of the Code of Federal Regulations (“CFR”) on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the U.S.-Jordan Free Trade Agreement entered into by the United States and the Hashemite Kingdom of Jordan.

DATES: Interim rule effective June 26, 2007; comments must be received by August 25, 2007.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2007-0001.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Seth Mazze, Office of International Trade (202-344-2634).

Legal Aspects: Holly Files, Office of International Trade (202-572-8817).

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See ADDRESSES above for information on how to submit comments.

Background

On October 24, 2000, the United States and the Hashemite Kingdom of Jordan (the “Parties”) signed the U.S.-Jordan Free Trade Agreement (“US-JFTA”), which is designed to eliminate tariffs and other trade barriers between the two countries. The provisions of the US-JFTA were adopted by the United States with the enactment on September 28, 2001 of the United States-Jordan Free Trade Area Implementation Act (the “Act”), Public Law 107-43, 115 Stat. 243 (19 U.S.C. 2112 note). On December 7, 2001, the President signed Proclamation 7512 to implement the provisions of the US-JFTA. The Proclamation, which was published in the **Federal Register** on December 13, 2001 (66 FR 64497), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of the Proclamation. The modifications to the HTSUS included the addition of new General Note 18, incorporating the relevant US-JFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the US-JFTA where the special program indicator “JO” appears in parenthesis in the “Special” rate of duty subcolumn.

U.S. Customs and Border Protection (“CBP”) is responsible for administering the provisions of the US-JFTA and the Act that relate to the importation of goods into the United States from Jordan. Therefore, the regulations set forth in this document pertain specifically to US-JFTA customs-related provisions, such as rules of origin, that govern the duty-free or reduced-duty treatment of products imported into the United States from Jordan. These rules do not confer origin or establish a criterion for determining the origin of imported goods for any other purpose. For example, origin determinations for country of origin marking purposes under 19 U.S.C. 1304 are not affected.

Article 2 and Annex 2.2 of the US-JFTA set forth the rules of origin and documentary requirements that apply for purposes of obtaining preferential treatment under the US-JFTA. Annex 2.1 of the US-JFTA sets forth the terms for the immediate elimination or staged reduction of duties on products of Jordan, with all products to become duty free within a ten-year period (by the year 2010).

Under Annex 2.2 of the US-JFTA and § 102 of the Act, to be eligible for reduced or duty-free treatment under the US-JFTA, a good imported into the United States from Jordan must meet three basic requirements: (1) it must be imported directly from Jordan into the customs territory of the United States; (2) it must be a product of Jordan, *i.e.*, it must be either wholly the growth, product, or manufacture of Jordan or a new or different article of commerce that has been grown, produced, or manufactured in Jordan; and (3) if it is a new or different article of commerce, it must have a minimum domestic content, *i.e.*, at least 35 percent of its appraised value must be

attributed to the cost or value of materials produced in Jordan plus the direct costs of processing operations performed in Jordan. Annex 2.2 of the US-JFTA further provides that: (1) the cost or value of U.S.-produced materials may be counted toward the Jordanian domestic content requirement to a maximum of 15 percent of the appraised value of the imported good; and (2) simple combining or packaging operations or mere dilution with water or another substance will confer neither Jordanian origin on an imported good nor Jordanian or U.S. origin on a constituent material of an imported good.

In addition, for purposes of demonstrating compliance with the origin criteria, Annex 2.2 of the US-JFTA establishes the requirements for submitting a declaration, when requested by CBP, that provides all pertinent information concerning the production or manufacture of an imported good.

In this document, CBP is setting forth in a new Subpart K in Part 10 of title 19 of the Code of Federal Regulations (CBP regulations) on an interim basis, regulations to implement the preferential tariff treatment and other customs-related provisions of the US-JFTA.

The interim regulations are discussed in detail below.

Discussion of Amendments

Part 10, Subpart K

General Provisions

Section 10.701 outlines the scope of new Subpart K, Part 10, of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart K, Part 10, are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart K, Part 10, are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.702 sets forth definitions of terms or expressions used in multiple contexts or places within Subpart K, Part 10. The definition of “wholly the growth, product, or manufacture of Jordan” in paragraph (r) reflects the definition set forth in Annex 2.2 of the US-JFTA except that reference is made to “Jordan” rather than to a “Party” in order to reflect a U.S. import context. Additional definitions that apply in a more limited Subpart K, Part 10, context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.703 sets forth the procedure for claiming US-JFTA preferential tariff treatment at the time of importation. Unlike certain

other free trade agreements to which the United States is a Party, such as the North American Free Trade Agreement (NAFTA) and the United States-Chile Free Trade Agreement (US-CFTA), the US-JFTA does not specify a procedure for making a post-importation claim. Therefore, Subpart K, Part 10, contains no regulatory provisions governing such claims. However, a protest against an alleged error in the liquidation of an entry may be brought under the normal procedures to contest a denial of US-JFTA benefits (see Part 174, CBP regulations (19 CFR Part 174)).

Section 10.704, as provided in Annex 2.2, paragraph 10(b), of the US-JFTA, requires a U.S. importer, upon request, to submit a declaration setting forth all pertinent information concerning the production or manufacture of the good. Section 10.705 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment.

Section 10.706 provides that the importer's declaration is not required for certain non-commercial or low-value importations.

Section 10.707 implements the portion of Annex 2.2, paragraph 10(b) of the US-JFTA concerning the maintenance of records necessary for the preparation of the declaration.

Section 10.708 provides for the denial of US-JFTA tariff benefits if the importer fails to comply with any of the requirements under Subpart K, Part 10, CBP regulations.

Rules of Origin

Section 10.709 sets forth the basic country of origin rules for obtaining preferential tariff treatment under the US-JFTA, as set forth in Annex 2.2 of the US-JFTA, § 102 of the Act, and General Note 18, HTSUS. Paragraph (a)(1) requires an eligible US-JFTA good to be either "wholly the growth, product, or manufacture of Jordan" or "new or different article of commerce which has been grown, produced, or manufactured in Jordan", reflecting standards set forth in Annex 2.2, paragraph 1(a), of the US-JFTA and § 102(a)(1)(A)(ii) of the Act. Paragraph (a)(2) of § 10.709 references the value-content requirement set forth in Annex 2.2, paragraph 1(c), of the US-JFTA and § 102(a)(1)(B) of the Act.

Paragraph (b)(1) of § 10.709 implements Annex 2.2, paragraph 2, of the US-JFTA and § 102(a)(2) of the Act, relating to the simple combining or packaging or mere dilution exceptions to the "new or different article of commerce" requirement. Since the language in the US-JFTA and the Act in this regard is identical to that used in the Caribbean Basin Economic Recovery Act ("CBERA") (see 19 U.S.C. 2703(a)(2)), paragraph (b)(1) incorporates by reference the examples and principles set forth in § 10.195(a)(2) of CBP's implementing CBERA regulations (19 CFR 10.195(a)(2)). Paragraph (b)(2) reflects the exception to the "new or different article of commerce" re-

quirement set forth in the footnote to Annex 2.2, paragraph 4, of the US-JFTA and in § 102(d) of the Act, relating to the processing of certain fruits into juices.

Paragraph (c) of § 10.709 provides that the rules of origin for textile and apparel products found in § 102.21 of the CBP regulations (19 CFR 102.21) will be used to determine whether textile and apparel goods from Jordan satisfy the “wholly the growth, product, or manufacture” or “new or different article of commerce” requirements of § 10.709(a), consistent with Annex 2.2, paragraph 9, of the US-JFTA and § 102(c) of the Act.

Section 10.710 sets forth provisions relating to the 35 percent value-content requirement of the US-JFTA. Paragraph (a) specifies the basic requirement contained in Annex 2.2, paragraph 1(c), of the US-JFTA and § 102(a)(1)(B)(i) of the Act.

Paragraph (b) allows the inclusion of U.S.-produced materials up to 15 percent of the appraised value, as provided for in Annex 2.2, paragraph 5, of the US-JFTA and § 102(a)(1)(B)(ii) of the Act. Paragraph (c) concerns the cost or value of materials that may be applied toward satisfaction of the 35 percent value-content requirement and is based on provisions contained in the US-JFTA, the Act, and § 10.196 of CBP’s CBERA regulations (19 CFR 10.196). Paragraph (c)(1) defines “materials produced in Jordan” in a manner similar to the approach taken in section 10.196(a) of CBP’s CBERA regulations. Paragraph (c)(1)(ii) was specifically drafted to reflect: (1) the application of the simple combining or packaging or mere dilution language to materials, as provided in Annex 2.2, paragraph 2, of the US-JFTA; and (2) the country of origin language which also applies to materials under Annex 2.2, paragraph 4, of the US-JFTA. The last sentence of paragraph (c)(1)(ii) refers to the useful examples contained in § 10.196(a) of CBP’s CBERA regulations, and the words “except where the context otherwise requires” are intended to alert the reader to the fact that some aspects of those examples apply only in a CBERA context. Paragraph (c)(2) sets forth the elements includable under the cost or value of materials, as provided in Annex 2.2, paragraph 6, of the US-JFTA.

Paragraph (d) sets forth provisions regarding direct costs of processing operations for purposes of the 35 percent value-content requirement, as contained in Annex 2.2, paragraph 7, of the US-JFTA and § 102(b) of the Act.

Section 10.711 reflects the definition of “imported directly,” as set forth in Annex 2.2, paragraph 8, of the US-JFTA.

Section 10.712 provides that claims for preferential tariff treatment under the US-JFTA will be subject to such verification as the CBP port director deems necessary.

Inapplicability of Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures and delayed effective date provisions of 5 U.S.C. 553(d) do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States because they implement preferential tariff treatment and related provisions of the US-JFTA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider all comments it receives before issuing a final rule.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. §553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0128.

The collections of information in these regulations are in §§ 10.703 and 10.704. This information is required in connection with claims for preferential tariff treatment and for the purpose of

the exercise of other rights under the US-JFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US-JFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 500.

Estimated average annual burden per respondent: 12 minutes.

Estimated number of respondents: 2,500.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

Signing Authority

This document is being issued in accordance with section 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements (United States-Jordan Free Trade Agreement).

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE CBP REGULATIONS

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

1. The general authority citation for Part 10 continues to read and the specific authority for new Subpart K is added to read as follows:

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

* * * * *

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).

2. Part 10, CBP regulations, is amended by unreserving and adding Subpart K to read as follows:

Subpart K – United States-Jordan Free Trade Agreement

Sec.

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 K – UNITED STATES – JORDAN FREE TRADE
AGREEMENT**

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 sub-headings 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 ben-

efits, 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 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.

PART 163 – RECORDKEEPING

3. The authority citation for Part 163 continues to read as follows:
Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

4. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(viii) as (a)(2)(ix) and adding a new paragraph (viii) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(viii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Jordan Free Trade Agreement (US-JFTA), including a US-JFTA declaration.

* * * * *

5. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163 – Interim (a)(1)(A) List.

* * * * *

IV. * * *

§ 10.704 US-JFTA records that the importer may have in support of a US-JFTA claim for preferential tariff treatment, including an importer's declaration.

* * * * *

PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

6. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

7. Section 178.2 is amended by adding new listings for §§ 10.703 and 10.704 to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
* * * * *	* * * * *	* * * * *
§§ 10.703 and 10.704.	Claim for preferential tariff treatment under the U.S.-Jordan Free Trade Agreement	1651 - 0128
* * * * *	* * * * *	* * * * *

* * * * *

DEBORAH J. SPERO,
*Acting Commissioner of Customs,
Customs and Border Protection.*

Approved: June 21, 2007

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, (72 FR 07-3133)]

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 162, 163, AND 178

USCBP-2007-0056

CBP Dec. 07-51

RIN 1505-AB76

UNITED STATES-MOROCCO FREE TRADE AGREEMENT

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends U.S. Customs and Border Protection (“CBP”) regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States-Morocco Free Trade Agreement entered into by the United States and the Kingdom of Morocco.

DATES: Interim rule effective June 28, 2007; August 25, 2007.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2007-0056.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, N.W. (5th Floor), Washington,

D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of International Trade, (202) 344–1959.

Other Operational Aspects: Seth Mazze, Office of International Trade, (202) 344–2634.

Audit Aspects: Mark Hanson, Regulatory Audit, Office of International Trade, (202) 863–6035.

Legal Aspects: Daniel Cornette, Office of International Trade, (202) 572–8731.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. See ADDRESSES above for information on how to submit comments.

Background

On June 15, 2004, the United States and the Kingdom of Morocco (the “Parties”) signed the U.S.-Morocco Free Trade Agreement (“MFTA” or “Agreement”). The stated objectives of the MFTA are to: encourage expansion and diversification of trade between the Parties; eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; substantially increase investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party’s territory; create effective procedures for the implementation and application of the MFTA, for its joint administration and for the resolution of disputes; and establish a framework for further regional and multilateral cooperation to expand and enhance the benefits of the MFTA.

The provisions of the MFTA were adopted by the United States with the enactment of the United States-Morocco Free Trade Agreement Implementation Act (the “Act”), Pub. L. 108–302, 118 Stat. 1103 (19 U.S.C. 3805 note), on August 17, 2004. Section 205 of the

Act requires that regulations be prescribed as necessary to implement these provisions of the MFTA.

On December 22, 2005, the President signed Proclamation 7971 to implement the provisions of the MFTA. The proclamation, which was published in the **Federal Register** on December 27, 2005 (70 FR 76649), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 3721 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 27, incorporating the relevant MFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the MFTA where the special program indicator “MA” appears in parenthesis in the “Special” rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XII to Chapter 99 to provide for temporary tariff rate quotas and applicable safeguards implemented by the MFTA.

U.S. Customs and Border Protection (“CBP”) is responsible for administering the provisions of the MFTA and the Act that relate to the importation of goods into the United States from Morocco. Those customs-related MFTA provisions that require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Four (Textiles and Apparel), Chapter Five (Rules of Origin), and Chapter Six (Customs Administration).

In Chapter One of the MFTA, certain general definitions in Article 1.3 have been incorporated into the MFTA implementing regulations. These regulations also implement Article 2.6 (Goods Re-entered after Repair or Alteration) of Chapter Two of the MFTA.

Chapter Four of the MFTA sets forth the measures relating to trade in textile and apparel goods between Morocco and the United States under the MFTA. The provisions within Chapter Four that require regulatory action by CBP are Article 4.3 (Rules of Origin and Related Matters), Article 4.4 (Customs and Administrative Cooperation), and Article 4.5 (Definitions).

Chapter Five of the MFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Morocco (MFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as specified in the Agreement. Under Article 5.1, originating goods may be grouped in three broad categories: (1) goods that are wholly the growth, product, or manufacture of one or both of the Parties; (2) goods (other than those covered by the product-specific rules set forth in Annex 4-A or Annex 5-A) that are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties, and that have a minimum

value-content, i.e., at least 35 percent of the good's appraised value must be attributed to the cost or 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; and (3) goods that satisfy the product-specific rules set forth in Annex 4-A (textile or apparel goods) or Annex 5-A (certain non-textile or non-apparel goods).

Article 5.2 explains that the term "new or different article of commerce" means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Article 5.3 provides that a good will not be considered to be a new or different article of commerce as the result of undergoing simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

Article 5.4 provides for the accumulation of production in the territory of one or both of the Parties in determining whether a good qualifies as originating under the MFTA. Articles 5.5 and 5.6 set forth the rules for calculating the value of materials and the direct costs of processing operations, respectively, for purposes of determining whether a good satisfies the 35 percent value-content requirement.

Articles 5.7 through 5.9 consist of additional sub-rules applicable to originating goods, involving retail packaging materials, packing materials for shipment, indirect materials, and transit and transshipment. In addition, Articles 5.10 and 5.11 set forth the procedural requirements that apply under the MFTA, in particular with regard to importer claims for preferential tariff treatment. Article 5.14 provides definitions of certain of the terms used in Chapter Five of the MFTA. The basic rules of origin in Chapter Five of the MFTA are set forth in General Note 27, HTSUS.

Chapter Six sets forth the customs operational provisions related to the implementation and administration of the MFTA.

In order to provide transparency and facilitate their use, the majority of the MFTA implementing regulations set forth in this document have been included within new Subpart M in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which MFTA implementation is more appropriate in the context of an existing regulatory provision, the MFTA regulatory text has been incorporated in an existing Part within the CBP regulations. In addition, this document sets forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new MFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Morocco for which, like goods originating in Canada, Mexico, Singapore and Chile, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of MFTA Article 2.5 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart M

General provisions

Section 10.761 outlines the scope of new Subpart M, Part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart M, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart M, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.762 sets forth definitions of common terms used in multiple contexts or places within Subpart M, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.3 of the MFTA and § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited Subpart M, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import requirements

Section 10.763 sets forth the procedure for claiming MFTA tariff benefits at the time of entry.

Section 10.764, as provided in MFTA Article 5.10(b), requires a U.S. importer, upon request, to submit a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. Included in § 10.764 is a provision that the declaration may be used either for a single importation or for multiple importations of identical goods.

Section 10.765 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment under the MFTA. As provided in MFTA Article 5.10(a), this section states that a U.S. importer who makes a claim for preferential tariff treatment for a good

is deemed to have certified that the good qualifies for such treatment.

Section 10.766 provides that the importer's declaration is not required for certain non-commercial or low-value importations.

Section 10.767 implements the portion of MFTA Article 5.10 concerning the maintenance of records necessary for the preparation of the declaration.

Section 10.768, which is based on MFTA Article 5.11.1, provides for the denial of MFTA tariff benefits if the importer fails to comply with any of the requirements of Subpart M, Part 10, CBP regulations.

Rules of origin

Sections 10.769 through 10.777 provide the implementing regulations regarding the rules of origin provisions of General Note 27, HTSUS, Article 4.3 and Chapter Five of the MFTA, and § 203 of the Act.

Definitions

Section 10.769 sets forth terms that are defined for purposes of the rules of origin. CBP notes that, pursuant to letters of understanding exchanged between the Parties on June 15, 2004, in determining whether a good meets the definition of a "new or different article of commerce" in paragraph (i) of § 10.769, the United States may be guided by the rules of origin set forth in Part 102, CBP regulations (19 CFR Part 102).

General Rules of Origin

Section 10.770 includes the basic rules of origin established in Article 5.1 of the MFTA, section 203(b) of the Act, and General Note 27(b), HTSUS.

Paragraph (a) of § 10.770 sets forth the three basic categories of goods that are considered originating goods under the MFTA. Paragraph (a)(1) of § 10.770 specifies those goods that are considered originating goods because they are wholly the growth, product, or manufacture of one or both of the Parties. Paragraph (a)(2) provides that goods are considered originating goods if they: (1) are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties; (2) are classified in HTSUS provisions that are not covered by the product-specific rules set forth in General Note 27(h), HTSUS; and (3) meet a 35 percent value-content requirement. Finally, paragraph (a)(3) states that goods are considered originating goods if: (1) they are classified in HTSUS provisions that are covered by the product-specific rules set forth in General Note 27(h), HTSUS; (2) each non-originating material used in the production of the good in the territory of one or both of the Parties undergoes an applicable change in

tariff classification or otherwise satisfies the requirements specified in General Note 27(h), HTSUS; and (3) the goods meet any other requirements specified in General Note 27, HTSUS.

Paragraph (b) of § 10.770 sets forth the basic rules that apply for purposes of determining whether a good satisfies the 35 percent value-content requirement referred to in § 10.770(a)(2).

Paragraph (c) of § 10.770 implements Article 5.3 of the MFTA, relating to the simple combining or packaging or mere dilution exceptions to the “new or different article of commerce” requirement of § 10.770(a)(2). Since the language in Article 5.3 of the MFTA (and § 203(i)(7)(B) of the Act) is nearly identical to the language found in § 213(a)(2) of the Caribbean Basin Economic Recovery Act (“CBERA”) (19 U.S.C. 2703(a)(2)), § 10.770(c) incorporates by reference the examples and principles set forth in § 10.195(a)(2) of CBP’s implementing CBERA regulations.

Originating textile or apparel goods

Section 10.771(a), as provided for in Article 4.3.7 of the MFTA, sets forth a de minimis rule for certain textile or apparel goods that may be considered to qualify as originating goods even though they fail to satisfy the applicable change in tariff classification set out in General Note 27(h). This paragraph also includes an exception to the de minimis rule.

Section 10.771(b), which is based on Article 4.3.8 of the MFTA, sets forth a special rule for textile or apparel goods classifiable under General Rule of Interpretation 3, HTSUS, as goods put up in sets for retail sale.

Accumulation

Section 10.772, which is derived from MFTA Article 5.4, sets forth the rule by which originating goods or materials from the territory of a Party 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 such other Party. In addition, this section also establishes that a good or material that is produced by one or more producers in the territory of one or both of the Parties is an originating good or material if the article satisfies all of the applicable requirements of the rules of origin of the MFTA.

Value of materials

Section 10.773 implements Article 5.5 of the MFTA, relating to the calculation of the value of materials that may be applied toward satisfaction of the 35 percent value-content requirement.

Direct costs of processing operations

Section 10.774, which reflects Article 5.6 of the MFTA, sets forth provisions regarding the calculation of direct costs of processing operations for purposes of the 35 percent value-content requirement.

Packaging and packing materials and containers for retail sale and for shipment

Section 10.775 is based on Article 5.7 of the MFTA and provides that retail packaging materials and packing materials for shipment are to be disregarded in determining whether a good qualifies as originating under the MFTA, except to the extent that the value of such packaging and packing materials may be included for purposes of meeting the 35 percent value-content requirement.

Indirect materials

Section 10.776, which is derived from Article 5.8 of the MFTA, provides that indirect materials will be disregarded in determining whether a good qualifies as an originating good under the MFTA, except to the extent that the cost of such indirect materials may be included toward satisfying the 35 percent value-content requirement.

Imported directly

Section 10.777(a) sets forth the basic rule, found in Article 5.1 of the MFTA, that a good must be imported directly from the territory of a Party into the territory of the other Party to qualify as an originating good under the MFTA. This paragraph further provides that, as set forth in Article 5.9 of the MFTA, a good will not be considered to be imported directly if, after exportation from the territory of a Party, the good undergoes production, manufacturing, or any other operation outside the territories of the Parties, other than certain minor operations.

Paragraph (b) of § 10.777 provides that an importer making a claim for preferential tariff treatment under the MFTA may be required to demonstrate, through the submission of documentary evidence, that the “imported directly” requirement was satisfied.

Tariff preference level

Section 10.778 sets forth the procedures for claiming MFTA tariff benefits for non-originating fabric or apparel goods entitled to preference under an applicable tariff preference level (“TPL”).

Section 10.779, which is based on Articles 4.3.9 and 4.3.10, describes the non-originating fabric and apparel goods that are eligible for TPL claims under the MFTA.

Section 10.780 provides for the denial of a TPL claim if the importer fails to comply with any applicable requirement under Subpart M, Part 10, CBP regulations, including the failure to provide

documentation, when requested by CBP, establishing that the good was imported directly from the territory of a Party into the territory of the other Party.

Section 10.781 establishes that non-originating fabric or apparel goods are entitled to preferential tariff treatment under an applicable TPL only if they are imported directly from the territory of a Party into the territory of the other Party.

Origin verifications and determinations

Section 10.784 implements MFTA Article 5.11.2 by providing that a claim for MFTA preferential tariff treatment, including any information submitted in support of the claim, will be subject to such verification as CBP deems necessary. This section further sets forth the circumstances under which a claim may be denied based on the results of the verification.

Section 10.785, which is based on Article 4.4 of the MFTA, concerns verifications conducted in Morocco by Moroccan authorities (at the request of CBP) relating to textile and apparel goods imported in the United States, whether or not a claim is made for MFTA preferential tariff treatment. U.S. officials may also assist in a verification in Morocco under this section. Section 10.785 also provides for specific actions to be taken by CBP during and after the verification, if directed by the Committee for the Implementation of Textile Agreements (CITA).

Section 10.786 implements MFTA Article 5.11.3 by providing that CBP will issue a determination to the importer when CBP determines that a claim for MFTA preferential tariff treatment should be denied based on the results of a verification. This section also prescribes the information required to be included in the determination.

Penalties

Section 10.787 concerns the general application of penalties to MFTA transactions and is based on MFTA Article 6.9.

Goods returned after repair or alteration

Section 10.788 implements MFTA Article 2.6 regarding duty treatment on goods re-entered after repair or alteration in Morocco.

Part 162

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional MFTA records maintenance and examination provisions contained in new Subpart M, Part 10, CBP regulations.

Part 163

A conforming amendment is made to § 163.1 to include the maintenance of any documentation that the importer may have in support of a claim for preference under the MFTA as an activity for which records must be maintained. Also, the list of records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list) is also amended to add the MFTA records that the importer may have in support of a MFTA claim for preferential tariff treatment.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the MFTA and the Act.

Inapplicability of Notice and Delayed Effective Date Requirements

Under section 553 of the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures and delayed effective date provisions of 5 U.S.C. 553(d) do not apply to agency rulemaking that involves a foreign affairs function of the United States. CBP has determined that these interim regulations involve the foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the MFTA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider all comments it receives before issuing a final rule.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of

the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0117.

The collections of information in these regulations are in §§ 10.763 and 10.764. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the MFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the MFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 800 hours.

Estimated average annual burden per respondent: 0.2 hours.

Estimated number of respondents: 4000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE CBP REGULATIONS

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

1. The general authority citation for Part 10 continues to read, and the specific authority for Subpart M is added, to read as follows:

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

* * * * *

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

2. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * 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, or Morocco 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, or 27, HTSUS, in the country in which the importer is a resident.

3. Part 10, CBP regulations, is amended by unreserving and adding Subpart M to read as follows:

Subpart M - United States-Morocco Free Trade Agreement

Sec.

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.

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Sec.

Origin Verifications and Determinations

- 10.784 Verification and justification of claim for preferential treatment.
- 10.785 Special rule for verifications in Morocco of U.S. imports of textile and apparel products.
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SUBPART M - UNITED STATES-MOROCCO FREE TRADE AGREEMENT

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 162 and 163 of this chapter.

§ 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 impor-

tation 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 (com-

monly 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) 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.

§ 10.766 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 main-

tenance 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. The term “new or different article of commerce” means, except as provided in § 10.770(c) of this subpart, a good that:

(1) Has been substantially transformed from a good or material that is not wholly the growth, product, of manufacture of one or 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 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;

(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 processes and materials involved and the time and level of skill required to perform those processes.

§ 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 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 classifi-

cation 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.

§ 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

12good 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 Special rule for verifications in Morocco 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 Morocco 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, or makes a negative determination, 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 United States. 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 Moroccan exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Morocco 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 6.5.5 of the MFTA, that 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 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 Moroccan 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, or makes a negative determination, 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 U.S. officials to Moroccan authorities. U.S. officials may undertake or assist in a verification under this section by conducting visits in Morocco, along with the competent authorities of Morocco, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Morocco 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 Morocco consistent with the laws, regulations, and procedures of Morocco, will be treated in accordance with Article 6.6 of the MFTA.

(e) Notification to Morocco; continuation of appropriate action. Prior to commencing appropriate action under paragraph (a) or (b) of this section, CBP will notify the government of Morocco. 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 those paragraphs.

§ 10.786 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.

Penalties

§ 10.787 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.

Goods Returned After Repair or Alteration

§ 10.788 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.

PART 162 - INSPECTION, SEARCH, AND SEIZURE

4. The authority citation for Part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

5. Section 162.0 is amended by revising the last sentence to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, and the U.S.-Morocco Free Trade Agreement are contained in Part 10, Subparts H, I, and M of this chapter, respectively.

PART 163 - RECORDKEEPING

6. The authority citation for Part 163 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

7. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(ix) as (a)(2)(x) and adding a new paragraph (ix) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) *Records*—

* * *

(2) *Activities* * * *

(ix) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Morocco Free Trade Agreement (MFTA), including a MFTA importer's declaration.

* * * * *

8. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163-Interim (a)(1)(A) List.

* * * * *

IV. * * *

§ 10.765 MFTA records that the importer may have in support of a MFTA claim for preferential tariff treatment, including an importer's declaration.

* * * * *

PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

9. The authority citation for Part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

10. Section 178.2 is amended by adding new listings (§§ 10.763 and 10.764) to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
* * *	* * *	* *
§§ 10.763 and 10.764.	Claim for preferential tariff treatment under the U.S.-Morocco Free Trade Agreement	1651 - 0117
* * *	* * *	* *

* * * * *

DEBORAH J. SPERO,
*Acting Commissioner of Customs,
Customs and Border Protection.*

Approved: June 22, 2007

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

General Notices

USCBP-2007-0060

Notice of Availability of a Draft Programmatic Environmental Assessment on the Western Hemisphere Travel Initiative at Land and Sea Ports of Entry

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of Availability

SUMMARY: This Notice of Availability announces that a draft Programmatic Environmental Assessment (PEA) for the Western Hemisphere Travel Initiative (WHTI) at land and sea ports of entry is available for public review and comment. The draft PEA documents a review of the potential environmental impacts from changes to technology and operations to meet the requirements for standardized, secure travel documents under WHTI.

DATES: The draft PEA will be available for public review and comment for a period of 30 days beginning on the date this document is published in the **Federal Register**. Copies of the draft PEA may be obtained by telephone request (202-344-1589) or by accessing the following Internet addresses: www.cbp.gov/travel and www.regulations.gov. Comments regarding the draft PEA may be submitted as set forth in the **ADDRESSES** section of this document.

ADDRESSES: Copies of the draft PEA may be obtained from U.S. Customs and Border Protection (CBP) through the Internet at www.cbp.gov/travel and www.regulations.gov or by writing to: CBP, 1300 Pennsylvania Avenue, NW, Room 5.4C, Attn: WHTI Environmental Assessment, Washington, D.C. 20229.

You may submit comments on the draft PEA, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Comments by mail are to be addressed to U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 5.4C, Attn: WHTI Environmental Assessment, Washington, DC 20229.

Instructions: All submissions must include the agency name and draft PEA docket number "USCBP-2007-0060." All comments will

be posted without change to <http://www.regulations.gov>, including any personal information sent with each comment.

FOR FURTHER INFORMATION CONTACT: Patrick Howard, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 5.4C, Washington, D.C. 20229, 202-344-1589, e-mail address: Patrick.Howard@associates.dhs.gov, or Pat Sobol, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 5.4C, Washington, D.C. 20229, 202-344-1381, e-mail address: Pat.Sobol@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, provides that upon full implementation, U.S. citizens and Bermudian, Canadian and Mexican citizens and nationals would be required to present a passport or such alternative documents as the Secretary of Homeland Security designates as satisfactorily establishing identity and citizenship upon entering the United States. In a notice of proposed rulemaking (NPRM) to be published in the **Federal Register**, the Department of Homeland Security (DHS) and Department of State (DOS) describe the second phase of a joint plan, known as the Western Hemisphere Travel Initiative (WHTI), to implement these new requirements. The NPRM proposes the specific documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico would be required to present when entering the United States at sea and land ports-of-entry from Western Hemisphere countries.

DHS and CBP have analyzed the potential impacts on the human environment of several alternate ways of implementing WHTI based on technological and operational considerations as part of the decision-making process regarding the implementation of WHTI at sea and land ports of entry. The impact analysis in the draft Programmatic Environmental Assessment (PEA), as explained in the report, focuses primarily on the effects of implementing WHTI at land ports of entry because the land environment is the most sensitive to the proposed document and technological changes associated with implementation of WHTI.¹

Four technological and operational alternatives are analyzed in the PEA that meet the requirements to define and process secure, standardized travel documents under WHTI. The four alternatives are: (1) maintaining the status quo by continuing current processes

¹Changes to processing travelers at sea ports of entry would happen entirely within existing buildings and other infrastructure, so no environmental impacts are anticipated.

for assessing individuals with multiple documents; (2) implementing standardized features and limiting the number of documents accepted for entry into the United States; (3) defining and enhancing a limited number of standardized acceptable documents with machine readable zone (MRZ) technology; and/or (4) defining and enhancing a limited number of standardized acceptable documents with MRZ and radio-frequency identification (RFID) technologies at the top volume land ports of entry. The potential impacts evaluated include air quality, noise, and environmental justice, among others.

Next Steps

This process is being conducted pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Management Directive 5100.1, *Environmental Planning Program of April 19, 2006*.

Substantive comments concerning environmental impacts received from the public and agencies during the comment period will be evaluated to determine whether further environmental impact review is needed in order to publish the final PEA. Should CBP determine that the implementation of the proposed action or alternatives would not have a significant impact on the environment, it will prepare a Finding of No Significant Impact (FONSI). The FONSI would be published in the **Federal Register** and in newspapers of general circulation in border areas along the border with both Canada and Mexico.

Should CBP determine that significant environmental impacts exist due to the plan, CBP would proceed with preparation of an Environmental Impact Statement (EIS).

Date: June 19, 2007

THOMAS S. WINKOWSKI,
Acting Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, (FR 12274)]

TERMINATION OF DRAWBACK RULINGS

The following drawback rulings are hereby terminated pursuant to §191.7(d) and §191.8(h) of the CBP regulations. The rulings have been reviewed by the Chicago drawback office and it has been determined that no claim or certificate of manufacture or delivery has been filed for more than 5 years. Termination is effective the date of this notice.

Ruling#	Company Name
41-00068-000	Artex International Inc
41-00449-000	Kohler Co
41-00694-001	Mustang Manufacturing Co., Inc.
41-00747-000	Miles Inc
41-01277-000	Homecrest Industries Inc,
41-01388-000	Allied Construction Products Inc
41-01501-000	Dexter Research Gmbh
41-01514-000	Valmet Charlotte Inc
41-01633-000	Multi-Tech Systems Inc
44-00098-000	Allen-Bradley Company
44-00242-000	Brackett Machine Inc.
44-00295-000	Compco Metal Products Co
44-00342-000	Ebner Furnaces Inc
44-00376-000	Down East Machine & Engineering
44-01223-000	Gleason Corporation
44-01449-000	Kemin Industries, Inc.
44-02298-000	Michigan Automotive Compressor
44-02393-000	Taiyo Yuden (U.S.A.), Inc.
44-02542-000	American Showa Inc
44-03763-000	American-National Can Company
44-04447-000	Barudan America Inc
44-04658-000	Harris Enterprises Inc
44-04666-000	Steelcase, Inc.
44-04764-000	Ferguson Perforating And Wire Co
44-04767-000	Main Steel Inc
44-04812-000	John Deere Construction Equip Co
44-04909-000	Avesta Sheffield Plate, Inc.
44-05011-000	American Pfauter L. P.
44-05056-000	John Deere Consumer Products
44-05220-000	Hess-Mae Inc / R And R Sharpening
44-05223-000	Hess Engineering Inc.
44-05513-000	Gillette Company Stationary Product Group
44-05700-000	Kowalski Heat Treating Co

CARL AMBROSON,
Area Port Director,
Chicago, Illinois.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, June 20, 2007

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings Office of Trade.*

GENERAL NOTICE

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO TARIFF CLASSIFICATION
OF DI-LINEAR ALKYL BENZENE**

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of di-linear alkylbenzene.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the U. S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of di-linear alkylbenzene under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on May 2, 2007, in Volume 41, Number 19, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 9, 2007.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of di-linear alkylbenzene was published in the May 2, 2007, CUSTOMS BULLETIN, Volume 41, Number 19. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY F86280, CBP ruled that Di-Linear Alkyl Benzene was classified in subheading 3817.10.5000, HTSUSA, (now 3817.10.1500) which provides for "Mixed alkylbenzenes and mixed alkyl-naphthalenes, other than those of heading 2707 or 2902: Mixed alkylbenzenes: Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error, and that the di-linear alkylbenzene should be

classified in subheading 3817.00.1000, HTSUSA, which provides for "Mixed alkylbenzenes and mixed alkylnaphthalenes, other than those of heading 2707 or 2902: Mixed alkylbenzenes: Mixed linear alkylbenzenes."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY F86280 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of di-linear alkylbenzene according to the analysis contained in Headquarters Ruling Letter (HQ) W968449, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: June 22, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W968449
June 22, 2007
CLA-2 OT:RR:CTF:TCM W968449 KSH
CATEGORY: Classification
TARIFF NO.: 3817.00.1000

MR. CRISTOBAL WILLAMS
FRP SERVICES & Co.
10 Bank St., Suite 450
White Plains, NY 10606

RE: Revocation of New York Ruling Letter (NY) F86280, dated August 9, 2000; Classification of Di-Linear-Alkyl Benzene.

DEAR MR. WILLAMS:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) F86280, issued to you on August 9, 2000, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of Di-Linear Alkyl Benzene. The chemical was classified in subheading 3817.10.5000, HTSUSA, (now 3817.10.1500) which provides for "Mixed alkylbenzenes and mixed alkylnaphthalenes, other than those of heading 2707 or 2902: Mixed alkylbenzenes: Other." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY F86280.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was pub-

lished on May 2, 2007, in Volume 41, Number 19, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

FACTS:

The merchandise at issue is a Di-Linear-Alkyl Benzene of HAB which is an aromatic mixture of alkylbenzenes.

ISSUE:

Whether the Di-Linear-Alkyl Benzene is classified as a mixed linear alkylbenzene of subheading 3817.00.1000, HTSUSA, or as "other" in subheading 3817.10.1500, HTSUSA.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protections (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

There is no dispute that the Di-Linear-Alkyl Benzene is classified in heading 3817, HTUSA, as a mixed alkylbenzene other than those of heading 2707 or 2902. The sole issue for consideration herein is whether the Di-Linear-Alkyl benzene is classified in subheading 3817.00.1000, HTSUSA, as a mixed linear alkylbenzene or in subheading 3817.00.1500, HTSUSA, as other.

Alkylbenzene is an organic compound that has an alkyl group bound to a benzene ring. www.thefreedictionary.com. It may be linear or branched. A linear chain consists of a sequence of carbon atoms extending in a direct line, characteristic of paraffins and olefins. Hawley's Condensed Chemical Dictionary, Twelfth Edition. A branched chain is a linear series of carbon atoms occurring in paraffinic hydrocarbons and some alcohols that is isomeric with its straight chain counterpart and has a subordinate chain of one or more carbon atoms. Id. at 247.

The merchandise at issue is identified as "Di-Linear-Alkyl Benzene." Subheading 3817.00.1000, HTSUSA, *eo nomine* provides for mixed linear alkylbenzenes without limitation. As the compound is a mixed linear alkylbenzene, it is classified in subheading 3817.00.1000, HTSUSA.

HOLDING:

By application of GRI 1, HTSUSA, the Di-Linear-Alkyl Benzene is classified in heading 3817, HTSUSA. By the same authority, it is specifically provided for in subheading 3817.00.1000, HTSUSA, which provides for "Mixed alkylbenzenes and mixed alkylnaphthalenes, other than those of heading 2707 or 2902: Mixed alkylbenzenes: Mixed linear alkylbenzenes." The general column one rate of duty is 6.5% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY F86280 is hereby revoked.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

GENERAL NOTICE

**MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE CLASSIFICATION AND
MARKING OF TEXTILE GRADUATION CAPS AND GOWNS**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of a tariff classification and marking ruling letter and revocation of any treatment only as it relates to the country of origin marking determination regarding the words "Assembled in Mexico".

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification and marking under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of textile graduation caps and gowns. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the Customs Bulletin, Vol. 41, No. 20, on May 9, 2007. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption September 9, 2007.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Tariff Classification and Marking Branch, (202) 572-8822.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective.

Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 41, No. 20, May 9, 2007, proposing to modify one ruling letter pertaining to the tariff classification and marking of textile graduation caps and gowns. As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. section 625(c)(1), CBP is modifying NY F84383 to reflect that the words “Assembled in Mexico” are an acceptable country of origin marking for the imported cap and gown. One comment was received in response to the proposed notice. It was noted that there is a discrepancy in the importer’s current plan to import these goods from China and the facts as set forth in NY

F84383 which specifically stated that the cap and gown were to be wholly assembled/packed in Mexico and returned to the U.S.

Although NY F84383 correctly determined that the graduation cap and gown are “wholly assembled” in a single country, Mexico, the ruling further noted that the U.S. origin fabrics used to make the graduation cap and gown were cut to shape in Mexico. As such, it was held that the cap and gown could not be marked “Assembled in Mexico” because the U.S. fabric had not been exported in a condition ready for assembly without further fabrication. However, since the subject merchandise was the result of an assembly operation and was finally assembled in Mexico within the meaning of 19 CFR 134.43(e), we now find that the operations involved in manufacturing the merchandise include assembly operations. Therefore, the finished merchandise may be marked “Assembled in Mexico”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY F84383, to reflect the proper country of origin marking pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967834 (Attachment). CBP also notes that HQ 967834 now includes a reference to EN 6114(3), “Other garments, knitted or crocheted”, which specifically provides for the classification of “Professional or scholastic gowns and robes”. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

In accordance with 19 U.S.C. section 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

DATED: June 22, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[Attachment]

104 CUSTOMS BULLETIN AND DECISIONS, VOL. 41, NO. 29, JULY 12, 2007

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ W967834

June 22, 2007

CLA-2 OT:RR:CTF:TCM W967834 ASM

CATEGORY: Classification; Marking

TARIFF NO.: 6211.43.0091

RANDY RUCKER, ESQ.
GARDNER CARTON & DOUGLAS LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698

RE: Request for reconsideration of NY F84383: Classification and Country of Origin Marking of textile Graduation Caps & Gowns; Modification of NY F84383

DEAR MR. RUCKER:

This is in response to a request for reconsideration dated August 2, 2005, made on behalf of your client, Jostens, Inc. (hereinafter "Jostens"), of Customs and Border Protection (CBP) New York Ruling letter (NY) F84383, dated April 4, 2000, which classified a graduation cap and gown under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample has been submitted to CBP for examination. In addition, we held a meeting with you and a representative of the Jostens' company on September 12, 2006, to discuss the classification of the subject merchandise and have reviewed your supplemental submission dated September 22, 2006.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the May 9, 2007, *Customs Bulletin*, Volume 41, Number 20, proposing modification of NY F84383, only as it related to the erroneous finding that the goods could not be marked "Assembled in Mexico" and to revoke any treatment accorded to substantially identical transactions. One comment was received in response to the notice.

FACTS:

The article identified as the "One Way" BDG graduation cap and gown is composed of woven 100 percent textured polyester fabric. The article identified as the "One Way" Treasure graduation cap and gown is composed of woven 100 percent acetate taffeta fabric. The sample submitted to CBP is a child's "kinder" size cap and gown made of 100 percent acetate fabric. At this time, Jostens contends that it will import the "One Way" caps and gowns, packaged together in sets of one cap and one gown each, from China.¹ Hereinafter, both styles of graduation caps and gowns at issue in this ruling will be referred to as "One Way" Graduation Caps and Gowns.

The graduation caps feature a two fabric crown (skull cap) with fabric that matches the gown on the outside and a white lining fabric sewn to the inside of the cap. The skull cap has a cardboard insert at the top and has been securely glued to the inside fabric lining portion and adhered with glue to the fabric covered 9.5 inch square flat top (mortarboard). The mortarboard fea-

¹ NY F84383 specifically indicated that the graduation cap and gown would be wholly assembled/packaged in a single country, that is, Mexico, before being returned to the U.S.

tures a fabric-covered button and folded fabric pleats on the underside, at each corner, which gives the top of the mortarboard a smooth clean line at each corner. The skullcap portion of the cap has gathered elastic at the back, which has been encased in the folded fabric hem. The gather measures approximately 5 inches in length. This secures the cap to the wearer's head. The skullcap has a folded hem with double overlock stitching at the edge.

The graduation gowns are intended to be full length, descending to the ankle, but the length will vary depending on the height of the wearer. The gowns feature a yolk panel that is lined with matching fabric to form the upper back, neckline, and front shoulder panels. The yolk is joined to a single gathered panel in the back, two separate pleated front panels, and long flowing sleeves that are gathered at each shoulder and descend to the wrist. The entire gown has fully turned and folded seams at the neckline, sleeves, and bottom edges. A color coordinated full front zippered closure has been designed to join the pleated front panels when closed. The pleats mask the seamed edges of the zipper tape with a crisp folded pleat on either side of the zipper. The gown has a v-neck shape at the neckline when the gown is fully closed. The interior seams of the gown have been securely finished with overlock stitching and the yolk has been secured with a second seam.

In NY F84383, dated April 4, 2000, CBP classified the "One Way" Graduation Caps in subheading 6505.90.8090, HTSUSA, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not strips), whether or not lined or trimmed . . . : Other: Of man-made fibers: Other: Not in part of braid, Other: Other: Other". The "One Way" Graduation Gowns were classified in subheading 6211.43.0091, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other."

In your first submission, you note that your client, Jostens, believes that its "One Way" Graduation Caps and Gowns are properly classified under subheading 9505.90.6000, HTSUSA, as "Festive, carnival or other entertainment articles . . . : Other: Other." Alternatively, Jostens suggests classification of these articles in subheading 6505.90.8090, HTSUSA, as "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed: Other: Of man-made fibers: Other: Not in part of braid: Other: Other: Other".

ISSUE:

What is the proper classification for the merchandise? Whether the proposed country of origin marking "Assembled in Mexico" satisfied the requirements of 19 USC 1304.

LAW AND ANALYSIS:

Classification

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes

(“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

We begin by noting that the EN to 6211 provides in relevant part that the “Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the article of [heading 62.11]”. The EN to 6114 specifically provides for the classification of knit graduation gowns, as follows:

This heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of the Chapter.

The heading includes, *inter alia*:

* * *

(3) Professional or scholastic gowns and robes.

* * *

In view of the foregoing, we can infer that well-made professional or scholastic gowns and robes, including academic gowns constructed of woven fabric, are classifiable in heading 6211, HTSUSA, because they are set forth as an exemplar of a type of “garment” classifiable in heading 6114, HTSUSA.

In your submission, you assert that the “One Way” Graduation Caps and Gowns are academic costumes traditionally worn in conjunction with the celebration of a graduation ceremony. You further assert that these articles are named “One Way” because they are disposable and intended for one time use as distinguished from the Jostens “rental” gowns, which are of a more durable construction and designed for repeated use. Thus, you reason that the subject textile articles should be classified as festive articles in heading 9505, HTSUSA.

Heading 9505, HTSUSA, includes articles, which are “Festive, carnival, or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof”. Note 1(e), Chapter 95, HTSUSA, excludes articles of “fancy dress, of textiles, of chapter 61 or 62” from classification in Chapter 95. The ENs to 9505, state, among other things, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche - heading 67.04), and paper hats. **However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.** [emphasis supplied]

* * *

In your first submission you begin by asserting that the case of *Midwest of Cannon Falls, Inc. v. United States*, 20 Ct. Int’l Trade 123 (1996), *aff’d in part, rev’d in part*, 122 F.3d 1423 (Fed. Cir. 1997), supports your position that the Jostens’ gowns are classifiable as festive articles under Chapter 95, HTSUSA.² However, before we can reach a determination as to the festive

² In your first submission you also cite the case of *Park B. Smith, Ltd. v. United States*,

nature of the subject merchandise, we must finally determine whether or not the gowns are articles of “fancy dress” that may be excluded from classification in Chapter 95, HTSUSA, pursuant to Note 1(e), Chapter 95, HTSUSA. Accordingly, we start by examining the case of *Rubie’s Costume Company v. United States*, 337 F.3d 1350 (Fed Cir. 2003), hereinafter *Rubie’s*. The *Rubie’s* case is directly on point in that it presented the question of whether CBP’s decision in HQ 961447, dated July 22, 1998, merited deference when CBP set forth specific characteristics which determined that textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel were classifiable as duty free “festive articles” under subheading 9505.90.6000, HTSUSA. In fact, the court found that HQ 961447 was entitled to deference and upheld the reasoning set forth in that ruling, which classified textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, as “festive articles” in heading 9505, HTSUSA. Of particular relevance to the merchandise now in question is the fact that the court specifically noted that HQ 961447 had correctly compared functional and structural deficiencies of “festive article” costumes with the standard features found in “wearing apparel” in order to determine whether articles are properly classified in Chapter 95 or Chapters 61/62, HTSUSA.

The ruling that was upheld in the *Rubie’s* case, HQ 961447, affirmed CBP’s decision in HQ 959545, dated June 2, 1997, which responded to a domestic interested party petition filed pursuant to Section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516) and Title 19 Code of Federal Regulations Section 175.1 (19 C.F.R. 175.1). In HQ 959545, CBP classified one textile costume, identified as the “Cute and Cuddly Clown” (No. 11594), as a normal article of wearing apparel classifiable in heading 6209, HTSUSA, because it was well-constructed and had a substantial amount of “finishing work”, i.e., sewing used to construct, tailor, or finish the article. The “Cute and Cuddly Clown” garment, which featured a durable neckline with two seams and no raw edges on the article, was classified in the provision for “Babies’ garments and clothing accessories . . .” under subheading 6209.30.3040, HTSUSA. Similarly, the subject “One Way” Graduation Gowns have a substantial amount of finishing work with all interior seams having durable overlock stitching and a second reinforcing seam, a two-ply yolk finished with two seams, and turned hems on the neck, cuffs, and hem. These features make the gowns extremely durable. In addition, the gowns feature a zipper closure and styling features that include formed pleated front panels and a gathered back panel.

HQ 959545 also set forth the criteria used to determine the textile costumes that were classifiable as “festive articles” in subheading 9505.90.6090, HTSUSA, and held that the “Witch of the Webs” (No. 11062), “Abdul Sheik of Arabia (No. 15020), “Pirate Boy” (No. 12013), and “Witch (No. 11005), were considered flimsy, lacking in durability, and not normal articles of apparel, and were properly classified as “Festive, carnival or other entertainment articles . . .” in heading 9505, HTSUSA. These textile costumes shared the following characteristics: There were no significant styling

347 F.3d 922 (Fed. Cir. 2003), which is not applicable to the subject merchandise because we limited the application of the court’s decision to the entries at issue in that case.

features and each costume had raw edges on fabrics that could “run” or fray. Clearly the subject “One Way” Graduation Gowns are distinguishable from these articles in that there is careful styling and construction in the gown which is constructed with formed pleats on the front panels, interior seams with durable overlock stitching and a second reinforcing seam, gathers at the top of the sleeves/back panel, a two-ply yolk, zipper closure, and turned hems on all edges.

The aforementioned features and numerous other characteristics used to distinguish between textile costumes classifiable as “Festive articles” of Chapter 95, HTSUSA, and “fancy dress” of Chapters 61 or 62, HTSUSA, have been set forth in great detail in the CBP Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 (“Textile Costumes under the HTSUS”). As noted in this publication, we generally consider four areas in making classification determinations for textile costumes, i.e., “Styling”, “Construction”, “Finishing Touches”, and “Embellishments”.

With regard to “Styling”, the examples provided in the Informed Compliance Publication note that a “well-made” article of Chapter 61 or 62, HTSUSA, would have two layers of fabric, pleats, and facing fabrics (two or more layers of fabric/linings). The subject gown has abundant “Styling” features with pleats on both front panels, gathers on the back panel/tops of sleeves, and a yolk that has been constructed with two layers of fabric. The Informed Compliance Publication also provides examples of well-made “Construction” elements, which include an assessment of the neckline and seams. Since the subject gown has a full lining on the yolk, this would be considered a well-made neckline. Furthermore, the over-lock stitching and double seams on the yolk are examples of a well-made garment. The publication notes that well-made “Finishing Touches” include zipper closures constructed with a fold of fabric that makes the zipper less visible on the exterior of the costume. The subject garment has a color coordinated full front zipper that has a fabric pleat on either side of the zipper tape making it less visible to the eye. Also representative of a well-made garment is a “turned” hem, i.e., the fabric edge is folded over and sewn to the inside of the garment. The subject garment has turned hems on every edge.

In your second submission dated September 22, 2006, you argue that the gowns do not have “well-made” hems and that the other “well-made” elements (zipper closure, pleats, double panel yolk) have not been incorporated for durability. You further assert that the gowns are “flimsy” overall. However, as set forth above, we have carefully assessed each of these features and found them to be “well-made” and the gowns to be durable overall. This determination has been made in accordance with the aforementioned Informed Compliance Publication. Furthermore, our assessment of each feature is consistent with the criteria used by CBP in determining what is meant by the terms “flimsy, non-durable” or “well-made” in order to classify textile costumes as festive articles in subheading 9505.90.6000, HTSUSA, or as “fancy dress” in Chapters 61 or 62, HTSUSA, and which has been set forth in the following rulings: HQ 957973, August 14, 1995; HQ 958049, August 21, 1995; HQ 958061, dated October 3, 1995; HQ 957948, May 7, 1996; HQ 957952, May 7, 1996; HQ 959545, June 2, 1997; HQ 959064, June 19, 1997; HQ 960805, August 22, 1997; HQ 960107, October 10, 1997; HQ 961447, July 22, 1998; HQ 962081, November 25, 1998; HQ 962184, November 25, 1998; and HQ 962441, March 26, 1999.

Although you assert that the court's opinion in *Rubie's* did not limit the holding to Halloween or party costumes, we note that the language of heading 9505, HTSUSA, only provides for "Festive, carnival or other entertainment articles". Clearly, a graduation gown is not a festive, carnival, or entertainment article. Rather, the graduation gown represents a solemn academic tradition dating back to medieval times. Hoods seem to have served to cover the head until superseded by the skullcap.³ While we recognize that academic graduations are often viewed in conjunction with a festive celebration, the actual graduation ceremony itself, with each scholar garbed in a traditional cap and gown, is an important, solemn, and dignified occasion. Few graduates wear the cap and gown to post-graduation parties and/or festivities, as it is most certainly not intended for such a purpose. In short, the graduation gown is a normal article of apparel for academic exercises that honor and distinguish the scholar/graduate on that ceremonial occasion.

In your submission, you contend that the stitching used in the subject gowns does not create "well-made" seams in accordance with CBP's standard for "fancy dress" classifiable in Chapter 61 or 62, HTSUSA, that was affirmed in *Rubie's* and later set forth in detail in the CBP Informed Compliance Publication (ICP) *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 ("Textile Costumes under the HTSUS"). We disagree.

The aforementioned ICP notes that a "flimsy" costume typically has loose stitching at the seams. It is our position that the costume design, type of fabric used, type of stitch, and length/tension used in a series of stitches, must all be considered in combination when making a determination as to whether the article is "well-made" or "flimsy". In this instance, we note that the quality of the stitching and seam construction is not loose or gaping. Furthermore, the subject gowns are not designed to fit close to the body. Given the fact that the gown has been designed as a loose and flowing garment, there are fewer pressure points and less stress exerted along the seams of this garment. As a result, the seams are of sufficient strength and quality to allow for repetitive use of the gown.

You have cited numerous rulings in your second submission, wherein CBP classified certain textile costumes as "festive articles" of Chapter 95, HTSUSA. You assert that these same costumes were tested by you and found to have greater seam strength than the gowns now at issue.⁴ CBP has not authenticated the samples used or assessed the validity of your test results. As we have already noted, seam quality may be affected by the type of fabric used, design of the garment, as well as the thread, stitching, and stitch tension. An article of wearing apparel constructed of delicate fabric may compare less favorably in terms of seam strength than the Jostens' gowns if subjected to the same battery of tests cited in your submission. Yet,

³ This information was obtained from the American Council on Education website. See "www.acenet.edu".

⁴ We have reviewed the CBP New York Ruling Letters set forth at **Exhibit B** of your second written submission dated September 22, 2006, wherein CBP cites to certain "well-made" features of the costumes in each of the rulings while still classifying the costumes as "festive articles" in Chapter 95, HTSUSA. A finding that the garment contains certain well-made feature(s) does not preclude the textile costume from being classified in Chapter 95, HTSUSA, where there is a determination that the overall assessment of the article is flimsy and non-durable.

such delicate fabrics are routinely used to construct articles of wearing apparel. Finally, the quality of a seam is not the only criteria by which we assess the construction and durability of a textile costume. Thus, in classifying textile costumes we consider the article as a whole and carefully assess such features as styling, construction, finishing touches, and embellishments. See “Appendix”, CBP Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 (“Textile Costumes under the HTSUS”).

In view of the foregoing, we conclude that the “One Way” Graduation Gowns are “well-made” garments and not “flimsy” costumes of Chapter 95, HTSUSA. Although the subject graduation gowns may only be used by the wearer one time, they are durable, well-made, and intended to be worn as a normal traditional article of apparel that is appropriately used for academic commencement exercises and not for festive, carnival, or other entertainment purposes.

In both of your submissions, you assert that the “One Way” graduation gown is disposable. However, disposability does not preclude classification of the gowns as garments of Chapter 62, HTSUSA. In the following rulings, CBP has consistently found disposable and one-time-wear garments to be normal types of wearing apparel: HQ 964179, dated August 10, 2000; HQ 958389, dated September 7, 1995; HQ 957117, dated August 1, 1995; NY L82210, dated February 16, 2005; and NY I80731, dated May 13, 2002.

The CBP rulings cited on pages 6–7 of your submission, wherein you assert that goods for birthday, wedding and graduation parties have been classified in heading 9505, HTSUSA, are not applicable to the articles now in question. First, we note that the cake decorations and other general party decorations/goods that were classified in these rulings may be properly classified within subheading 9505.90.4000, HTSUSA, because the provision specifically provides for “. . . Confetti, paper spirals or streamers, party favors and noise makers; parts and accessories thereof.” Secondly, unlike the subject “One Way” Graduation Gowns, the decorative entertainment articles set forth in the CBP rulings cited in your submission, are not textile articles of wearing apparel.

Inasmuch as the “One Way” Graduation Caps and Gowns are retail packaged as a set for importation, we note that these goods cannot be classified in accordance with GRI 1. These articles are *prima facie*, classifiable in two different headings. The “One Way” Graduation Gowns are classifiable in heading 6211, HTSUSA, which provides, in part, for “. . . other garments”. The “One Way” Graduation Caps are classifiable in heading 6505, HTSUSA, which provides, in part for “Hats or other headgear”. In your second submission, you suggest that the “One Way” Graduation Caps are separately classifiable in heading 9505, HTSUSA, because they are of flimsy and non-durable construction.

When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * *

GRI 3 establishes a hierarchy of methods of classifying goods that fall under two or more headings. GRI 3(a) states that the heading providing the most specific description is to be preferred to a heading which provides a more general description. However, GRI 3(a) indicates that when two or more headings each refer to part only of the materials or substances in a composite good or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the other. In this case, the headings, 6211 and 6505, HTSUSA, each refer to only part of the items in the set. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character and a determination must be made as to whether or not these are goods put up in "sets for retail sale". In relevant part, the ENs to GRI 3(b) state:

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * *

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

In accordance with GRI 3(b), we find that the subject component articles are properly classified as "sets" because they consist of goods put up in a set for retail sale. The gown and coordinating hat are put up together to meet a particular need or carry out a specific activity, i.e., designation as an academic scholar for graduation commencement exercises. Furthermore, the components in this set are, *prima facie*, classifiable in different headings and have been put up in retail packaging suitable for sale directly to users without repacking.

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed*, 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), *rehearing denied*, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *affirmed*, 171 F. 3d 1370 (Fed. Cir. 1999).

The essential character of these articles can be determined by comparing each component as it relates to the use of the product. In this instance, it is the gown that imparts the essential character to the set because the distinctive design renders it immediately recognizable as a formal gown that is commonly used for graduation exercises, i.e., the long flowing sleeves, a two-ply yolk panel design with carefully pleated front panels that attach just below the shoulders, voluminous material to create a full drape to the gown and a full length that typically descends to the ankles. Furthermore, the gown is more carefully constructed with fully turned and sewn hems, double reinforced interior seams, pleats, gathers, and a zipper closure. By comparison, the mortarboard is constructed with a cardboard insert, which has been glued to the skullcap portion, and the cardboard is covered with fabric that has been folded/glued to secure it in place.⁵ Clearly, the gown was more costly to manufacture due to the voluminous material used to construct the garment and added finishing features, i.e., turned hems, gathered and pleated panels, double reinforced interior seams, and a full length zipper closure.

We disagree with your assertion that the mortarboard provides the essential character to the set due to the use and symbolism of a tassel which may be attached to the mortarboard and your contention that the cap is the focal point of the academic costume. As we have previously noted in this ruling, based on our research, it is the gown which has been identified as the distinctive garb of academic scholars. It is the graduation gown that is more closely aligned with the original clerical robes donned by scholars during medieval times. In reality, the vast majority of high schools and universities garb their graduates in cap *and* gown even though the cap alone would be far less expensive to purchase. In fact, the photograph submitted in **Exhibit F** of your second submission, which was reproduced from the *U.S. News and World Report Cover* (America’s Best Colleges, August 28, 2006), shows graduates in both cap and gown. We further note that the second visual representation contained at **Exhibit F**, taken from a *Wall Street Journal* article

⁵ With regard to your assertion that the graduation caps, if imported separately, would be classified in heading 9505, HTSUSA, due to a flimsy and non-durable construction, Chapter 65, Note 1(c), HTSUSA, only precludes “Dolls’ hats, other toy hats or carnival articles of chapter 95”. The subject graduation caps are used to represent an important and solemn academic occasion. As such, we do not consider the mortarboard caps to be a “carnival” article or otherwise precluded from classification as “headgear” in heading 6505, HTSUSA. In addition, the EN’s to 6507, specifically provide for hat foundations consisting of “paperboard”, “papier mache”, and “cork”. Presumably, hats constructed of these lightweight foundations would provide greater comfort for the wearer but may also necessitate that the covering materials be glued rather than sewn to such a foundation.

(September 12, 2006) is merely an artist's fictional representation of a disembodied neck, head and mortarboard being carried on a conveyor belt with no depiction of the part of the body that would have been garbed in the graduation gown.

Furthermore, CBP has generally held that the garment and not the headgear imparts the essential character to a GRI 3(b) set. See HQ 959545, dated June 2, 1997, in which it was noted that by application of GRI 3(b), the "Cute and Cuddly Clown" hat that was retail packaged with the costume was also classifiable under Chapter 62, HTSUSA, because the essential character of the set was determined by the garment. See also NY B83708, dated April 14, 1997, which found that the gown imparted the essential character to a graduation cap, gown, tassel, hood, and stole set pursuant to a GRI 3(b) analysis.

In view of the foregoing, we find that the "One Way" Graduation Caps and Gowns are properly classified as retail sets pursuant to GRI 3(b) and that the gown imparts the essential character to the set. Thus, we find that NY F84383, dated April 4, 2000, correctly classified the subject graduation gowns as garments of subheading 6211.43.0091, HTSUSA.

Country of Origin Marking

One comment was received in response to the proposed notice. It was noted that there is a discrepancy in the importer's current plan to import these goods from China and the facts as set forth in NY F84383 which specifically stated that the cap and gown were to be wholly assembled/packed in Mexico and returned to the U.S.

As a point of clarification, we now wish to note that this ruling does not address the country of origin marking of the subject goods if they are imported from China. Rather, this ruling is limited to the facts as set forth in NY F84383, which indicated that the cap and gown were wholly assembled in Mexico, yet held that the words "Assembled in Mexico" would not be an acceptable country of origin marking for the imported cap and gown. As such, the country of origin marking determination contained herein would not apply to the goods now in question if they are imported from China.

Although NY F84383 correctly determined that the graduation cap and gown are "wholly assembled" in a single country, Mexico, the ruling further noted that the U.S. origin fabrics used to make the graduation cap and gown were cut to shape in Mexico. Thus, it was held that the cap and gown could not be marked "Assembled in Mexico" because the U.S. fabric had not been exported in a condition ready for assembly without further fabrication.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. By enacting 19 U.S.C. 1304, Congress intended to ensure that the ultimate purchaser would be able to know by inspecting the marking on the imported goods the country of which the goods are the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will. See *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 C.A.D. 104 (1940).

The subject merchandise is a product of Mexico under 19 CFR Part 102. As such, with regard to the proposed marking statement, "Assembled in Mexico", Section 134.43(e), CBP Regulations (19 CFR 134.43(e)), provides, in pertinent part that:

Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

- (1) Assembled in (country of final assembly);
- (2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or
- (3) Made in, or product of, (country of final assembly).

Since the subject merchandise was the result of an assembly operation and was finally assembled in Mexico within the meaning of 19 CFR 134.43(e), we now find that the finished merchandise may be marked "Made in Mexico" or "Assembled in Mexico". This determination is consistent with the following rulings, which found that apparel cut and assembled overseas can be properly marked "Assembled in": HQ 562205, dated March 26, 2002; HQ 560933, dated June 26, 1998; and HQ 560095, dated January 27, 1997.

In view of the foregoing, we have reconsidered NY F84383 and determined that based on the facts as set forth in that ruling, it was error to hold that the subject merchandise could not be marked "Assembled in Mexico".

HOLDING:

NY F84383, dated April 4, 2000, is hereby modified, only with respect to the determination regarding the country of origin marking "Assembled in Mexico".

If the subject merchandise has been manufactured in Mexico as a result of assembly operations and determined to be a product of Mexico under 19 CFR Part 102, it may be marked "Assembled in Mexico." However, we note that the importer now plans to import the merchandise from China. Accordingly, this determination would no longer be applicable unless the merchandise has been wholly assembled/packaged in Mexico and returned to the U.S., in the exact manner as set forth in NY F84383. A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP Officer.

The subject merchandise, identified as the Josten's "One Way" BDG graduation cap and gown and the "One Way" Treasure graduation cap and gown, is correctly classified in subheading 6211.43.0091, HTSUSA, which provides for, "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other." The general column one rate of duty is 16 percent *ad valorem*. The textile category is 659.

Quota/visa requirements are no longer applicable for merchandise, which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas", which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions and re-

lated issues, we refer you to the web site at the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

Please note that the duty rates set forth in this ruling letter are merely provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

