DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Parts 121 and 129

[Agencies and Dockets]

SUMMARY: This document sets forth interim amendments to one of the provisions of the Customs Regulations that implement the trade benefits for Caribbean Basin countries contained in section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA). The interim regulatory amendments involve the brassieres provision of section 213(b) and primarily reflect changes made to the statutory provision section 3107 of the Trade Act of 2002. The specific statutory changes addressed in this document involve the minimum U.S. material content requirements that apply for purposes of preferential treatment of brassieres under the CBERA. This document also includes a number of other changes to the CBPRA implementing regulations for brassieres to clarify a number of issues that arose after their original publication.


ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the Bureau of Customs and Border Protection, 799 9th Street NW., Washington, DC.


Legal issues: Cynthia Reese, Office of Regulations and Rulings (202) 572-8790.

SUPPLEMENTARY INFORMATION:

Background

Textile and Apparel Articles Under the Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI), statutary codified at 19 U.S.C. 2701-2707) instituted a duty preference program that applies to exports of goods from those Caribbean Basin countries that have been designated by the President as program beneficiaries. On May 18, 2000, the President signed into law the Trade and Development Act of 2000, Public Law 106–200, 114 Stat. 251, which included as Title II the United States-Caribbean Basin Trade Partnership Act, or CBTPA. The CBTPA provisions included section 211 which amended section 213(b) of the CBERA (19 U.S.C. 2703(b)) in order to, among other things, provide in new paragraph (2) for the preferential treatment of certain textile and apparel articles, specified in subparagraph (A), that had previously been excluded from the CBI duty-free program. The preferential treatment for those textile and apparel articles under paragraph (2)(A) of section 213(b) involves not only duty-free treatment but also entry in the United States free of quantitative restrictions, limitations, or consultation levels. Paragraph (2)(A) of the statute includes, in clause (iv), a specific provision covering brassieres from designated CBTPA beneficiary countries.

On October 2, 2000, the President signed Proclamation 7351 to implement the provisions of the CBTPA. This Proclamation, which was published in the Federal Register (65 FR 59329) on October 4, 2000, modified the Harmonized Tariff Schedule of the United States (HTSUS) by, among other things, the addition of a new Subchapter XX to Chapter 98 to address the majority of the textile and apparel provisions of the CBTPA. Within that Subchapter XX, the brassieres provisions of paragraph (2)(A)(iv) of the CBTPA statute is dealt with in U.S. Note 2(d) and in subheading 9820.11.15.

On October 5, 2000, the U.S. Customs Service (now the Bureau of Customs and Border Protection (CBP)) published in the Federal Register (65 FR 59650) T.D. 00–68 to amend the Customs Regulations on an interim basis in order to set forth basic legal requirements and procedures that apply for purposes of obtaining preferential treatment of textile and apparel articles pursuant to the provisions added to section 213(b) by the CBTPA. Those interim regulations, consisting of §§10.221 through 10.227 of the Customs Regulations (19 CFR 10.221 through 10.227), include, in paragraph (a) of §10.223, a list of the various groups of articles that are eligible for preferential treatment under the statute. Paragraph (a)(6) of §10.223 specifically addressed the basic CBTPA brassieres provision of subclause (I) of paragraph (2)(A)(iv) of the statute and subheading 9820.11.15 of the HTSUS. The regulatory texts set forth in T.D. 00–68 did not address subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute and U.S. Note 2(d) of Subchapter XX, Chapter 98, HTSUS, because under the terms of the statute those provisions applied only to articles entered on or after October 1, 2001.

On October 4, 2001, CBP (as legacy Customs) published in the Federal
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“components.” Similarly, the definition of “cost” in paragraph (a)(4) and the definition of “declared customs value” in paragraph (a)(5) have been modified to refer simply to “fabrics.”

2. The following changes have been made to paragraph (b) which concerns the 75/85 percent U.S. fabric content requirements for preferential treatment in subclauses (II) and (III) of the statute:

a. In the introductory text of paragraph (b)(1), reference is made to the year that begins on “October 1, 2002” (rather than “October 1, 2001”) to reflect the applicable effective date set forth in Proclamation 7626.

b. Throughout the paragraph (b) texts, all references to U.S.-formed “fabric components” have been replaced by references to U.S.-formed “fabric,” the words “produced and” have been removed from the expression “produced and entered,” and the parenthetical reference “(exclusive of all findings and trimmings)” has been added as appropriate after references to “fabrics” and “fabric.” These changes simply conform the regulatory text to the wording changes in the statute.

c. Paragraph (b)(1)(i), which concerns the 75 percent requirement of subclause (II) of the statute, has been changed to refer to articles that are “entered as articles described in §10.223(a)(6),” and paragraph (b)(1)(ii), which concerns the 85 percent requirement of subclause (III) of the statute, has been changed to refer to articles that “conform to the production standards set forth in §10.223(a)(6).” These wording changes are in response to the statutory wording changes regarding articles that are “entered” and that are “eligible” under clause (iv). The differences in wording in the two regulatory texts are necessary in order to enable the 85 percent standard to operate. CBP notes in this regard that if the universe of articles that are looked at for purposes of assessing compliance with the 85 percent standard is the same as that used for purposes of the 75 percent standard (that is, articles that were entered under the HTSUS subheading that applies to articles described in paragraph (2)(A)(iv)(I) of the statute and §10.223(a)(6)) against which compliance with the 85 percent standard can be determined. The wording used in paragraph (b)(1)(ii) of the regulatory text (which is also reflected in the general statement of the paragraph (b)(1) introductory text and in the general rule in paragraph (b)(2)(I)(A)), by referring to articles that meet the U.S./Caribbean cutting and assembly production requirement (regardless of the HTSUS subheading under which they are entered), is intended to avoid this anomalous result.

d. In the general rules of application set forth in paragraph (b)(2)(i), two new subparagraphs (C) and (D) have been added to clarify the application of the different regulatory language for the 75 and 85 percent standards discussed at point c. above, and former subparagraph (D) has been removed because it concerned the year of production which is no longer relevant under the amended statutory text.

e. Also in paragraph (b)(2)(i), former subparagraph (C) has been redesignated as subparagraph (E) and the text has been modified, and a new subparagraph (L) has been added, primarily to reflect that the findings and trimmings referred to in the context of brassieres are not limited to foreign findings and trimmings.

f. Also in paragraph (b)(2)(i), former subparagraph (E) has been redesignated as subparagraph (C) and the text, which concerns a new producer or new entity controlling production, has been revised to incorporate the new wording (“entered as articles described in §10.223(a)(6)” of paragraph (b)(1)(i) and to clarify what CBP believes is a necessary conclusion under the statutory text, that is, that in the described context the producer or entity must first meet the 85 (rather than the 75) percent standard.

g. In paragraph (b)(2)(ii), a new Example 2 and a new Example 3 have been added to cover new subparagraphs (C) and (D) of paragraph (b)(2)(i), and Examples 2 through 6 consequently have been redesignated as Examples 4 through 8.

h. Also in paragraph (b)(2)(ii), redesignated Example 6 has been revised in order to replace the former “produced and entered” in the same year scenario with a factual pattern addressing the 75 versus 85 percent standard and entry in different years.

i. Also in paragraph (b)(2)(ii), redesignated Example 7 has been revised to reflect that the 85 percent standard (rather than the 75 percent standard) applies to a new producer or entity controlling production, as stated in redesignated and revised subparagraph (C) of paragraph (b)(2)(i).

3. In paragraph (c)(3)(i), the text of the declaration of compliance has been modified by removing each reference to “components” and by removing the words “produced and” before the word “entered” in blocks 4 and 6, in each case to reflect changes in statutory language.

4. Finally, in paragraph (d)(1)(iv), the next to last sentence has been modified to state that the inventory records must indicate that the required production occurred (rather than “identify the date of” production), and the last sentence has been modified to refer to purchases made during the “accounting period” (rather than “year”), because the year of production is not relevant under the amended statute.

Other Amendments

In addition to the changes described above that result from the changes made to the statute by section 3107(a) of the Act, CBP has included a number of other changes in the revised text of §10.228 set forth in this document. These additional changes, which are intended to clarify or otherwise improve the interim regulatory texts, are as follows:

1. The definition of “cost” in paragraph (a)(4) and the definition of “declared customs value” in paragraph (a)(5) have been revised for purposes of clarity, in particular in order to include rules covering cases in which there is no price based on an exportation to a CBP A beneficiary country.

2. The definition of “year” in paragraph (a)(6) has been reworded for purposes of clarity.

3. In Example 1 under paragraph (b)(2)(ii), the words “in the first year” have been added to the scenario in the first sentence to clarify that the year in question is one during which the 75 percent standard must be met.

4. In Example 5 under paragraph (b)(2)(ii), the references to foreign origin strips have been replaced by references to “strips and labels” to ensure that the example is clearly directed to findings and trimmings and not to materials that are considered to be components of brassieres.

5. In paragraph (c)(3)(i), the text of the declaration of compliance has been modified by replacing the words “all articles” with “brassieres” in blocks 4 through 6 and by simplifying the wording within block 6.

6. Finally, in paragraph (c)(3)(ii), the subparagraph (E) instruction for completion of block 6 has been removed...
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**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(c)(1).

**List of Subjects in 19 CFR Part 10**

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

**Amendments to the Regulations**

For the reasons set forth in the preamble, part 10 of the Customs Regulations (19 CFR part 10) is amended as set forth below:

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

1. The authority citation for part 10 continues to read in part as follows:

   **Authority:** 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1490, 1508, 1623, 1624, 3314;

   * * *

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

2. Section 10.228 is revised to read as follows:

   **§ 10.228 Additional requirements for preferential treatment of brassieres.**

   (a) **Definitions.** When used in this section, the following terms have the meanings indicated:

   (1) **Producer.** “Producer” means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

   (2) **Entity controlling production.** “Entity controlling production” means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

   (3) **Fabrics formed in the United States.** “Fabrics formed in the United States” means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

   (4) **Cost.** “Cost” when used with reference to fabrics formed in the United States means:

   (i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

      (A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

      (B) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

   (ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

   (5) **Declared customs value.** “Declared customs value” when used with reference to fabric contained in an article means the sum of:

      (i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

      (ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

      (A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

         (1) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

         (2) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;
(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(iii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embedding and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(1) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(2) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(iii)(C) of this section or if CBP finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) Year. “Year” means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2000.

(7) Entered. “Entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) Limitations on preferential treatment—(1) General. During the year that begins on October 1, 2002, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in §10.223(a)(6) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under §10.225, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) Rules of application—(i) General. For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in §10.223(a)(6) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in §10.223(a)(6) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in §10.223(a)(6) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2002, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(1) Will not be eligible for preferential treatment during the following year;
(2) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(3) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(C) A new producer or new entity controlling production, that is, a producer or entity controlling production which did not produce or control production of articles that were entered as articles described in §10.223(a)(6) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer is not required to prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) Examples. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the production standards specified in §10.223(a)(6) in the first year sends 50 percent of that production to CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the fabrics sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in §10.223(a)(6); one of those shipments is entered under the HTSUS subheading that covers articles described in §10.223(a)(6), the second shipment is entered under the HTSUS subheading that covers articles described in §10.223(a)(6), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under HTSUS subheading that covers articles described in §10.223(a)(6) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in §10.223(a)(6); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in §10.223(a)(6) because the 75 percent standard had not been met in the preceding year. If the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether the 85 percent standard has been met. If the 85 percent standard is met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in §10.223(a)(6).

Example 4. An entity controlling production of articles that meet the description in §10.223(a)(6) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment(1) are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for CBTPA region markets; those articles are entered in that year under HTSUS subheading 6212.10. During the following year all of the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the production standards specified in §10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. A CBTPA beneficiary country producer’s entire production of articles that meet the description in §10.223(a)(6) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment(1) are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for CBTPA region markets; those articles are entered in that year under HTSUS subheading 6212.10. During the following year all of the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the production standards specified in §10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.
articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer’s articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year. The producer’s articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer’s articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer’s articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer’s articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 8. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) Documentation—(1) Initial declaration of compliance. In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(iii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) Amended declaration of compliance. If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, the importer should file the amendment within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) Form and preparation of declaration of compliance—(i) Form. The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:


1. Year beginning date: October 1, _____
   Year ending date: September 30, _____

2. Identity of preparer (producer or entity controlling production):
   Full name and address: _______________________________________________________________________
   Telephone number: ______________
   Facsimile number: ______________
   Importer identification number: ______________

3. If the preparer is an entity controlling production, provide the following for each producer:
   Full name and address: _______________________________________________________________________
   Telephone number: ______________
   Facsimile number: ______________

4. Aggregate cost of fabrics formed in the United States that were used in the production of brassieres that were entered during the year:

5. Aggregate declared customs value of the fabric contained in brassieres that were entered during the year:

6. I declare that the aggregate cost of fabric formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.228(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.
CARRIBEAN BASIN TRADE PARTNERSHIP ACT DECLARATION OF COMPLIANCE FOR BRASSIERES—Continued
(19 CFR 10.223(a)(6) and 10.228)

7. Authorized signature: ____________________________

8. Name and title (print or type): ____________________

Date: ____________________________

(ii) Preparation. The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer’s importer identification number (see §24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) Filing of declaration of compliance. The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Bureau of Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) Verification of declaration of compliance—(1) Verification procedure. A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP deems necessary reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under §10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in §10.223(a)(6) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under §10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) Notice of determination. If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the Federal Register.

Robert C. Bonner,
Commissioner of Customs and Border Protection.


Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

DEPARTMENT OF HOMELAND SECURITY
Coast Guard

33 CFR Part 117

[CGD13–03–034]

Drawbridge Operation Regulations; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the First Avenue South Drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington. This deviation allows the bridge to temporarily operate only one leaf of the bascule unless notice is provided for double-leaf openings. The deviation is necessary to facilitate painting of the structure with...