

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

**DEPARTMENT OF THE TREASURY**

**19 CFR PARTS 10, 163, and 178**

**USCBP-2007- \_\_\_\_\_**

**CBP Dec. 07-\_\_**

**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 [insert date of publication in the **Federal Register**];  
Comments must be received by [insert date 60 days after date of publication in the **Federal Register**].

**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 [INSERT DOCKET NUMBER].

- 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 five 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). The provisions of § 213A(d) are not addressed in the regulatory changes set forth in this interim rulemaking.

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. The provisions of § 213A(e) also are not addressed in the regulatory amendments set forth in this document.

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 of Finance of the Senate in preparing such regulations. CBP has consulted with the Committee on Way and Means and the Committee of 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 definitions 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 entries in the applicable one-year period for which duty-free claims are made for such articles 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 specified countries 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 individual entry or 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 entered during the applicable one-year period. This paragraph further provides that a producer or entity controlling production that elects to use one method during an applicable one-year period may elect to use the other method during any succeeding 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 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 controller 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 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 federal courts have recognized the legitimate use of the good cause exception set forth in § 553(b)(B) of the APA when there is a statutorily imposed deadline combined with other relevant factors such as a complicated statutory scheme, evidence that the agency has been diligent in its efforts to comply with the statutory deadline, or a compelling need for rapid implementation of the regulation. See Methodist Hosp. of Sacramento v. Shalala, 38 F.3d 1225 (D.C. Cir. 1994) (5 month statutory deadline and complex regulatory framework constituted good cause); Petry v.

Block, 737 F.2d 1193, 1203 (D.C. Cir. 1984) (60 day statutory deadline and complex statutory deadline constituted good cause); and National Women, Infants, and Children Grocers Association v. Food and Nutrition Services, 2006 WL 416266 (D.D.C. Feb. 23, 2006)(14 month statutory deadline, complex statutory framework, and diligent agency efforts to prepare and publish regulation constituted good cause). Controlling law also recognizes that the interim nature of a rule is a “significant factor in evaluating good cause justifications.” Tenn. Gas Pipeline Co. v. Fed. Energy Regulatory Comm’n, 969 F.2d 1141, 1144 (D.C. Cir. 1992). The statutorily imposed 180 day deadline in the HOPE Act, coupled with the complex statutory framework, support the invocation of the good cause exception in this rulemaking. In addition, CBP is soliciting comments in this interim rule and will consider the comments it receives before finalization of the 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, CBP believes that good cause exists for dispensing with 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 [        ].

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: \_\_\_\_\_ hours.

Estimated average annual burden per respondent: \_\_\_\_ hours.

Estimated number of respondents: \_\_\_\_\_.

Estimated annual frequency of responses: \_\_\_\_.

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 produced in a country other than Haiti or any 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 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 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 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;

(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)(1) 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 period for which a duty-free claim is made for such articles under § 10.847(a) of this subpart, the sum of the cost or value of the materials produced in Haiti or one or more 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 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.

(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.

(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 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.

(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 individual entry or annual aggregation method for an applicable one-year period. A producer or entity controlling producer that elects to use the individual entry or 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 entered as articles described in § 10.843(a) of this subpart during that applicable one-year period. However, a producer that elects to use one of the two methods during an applicable one-year period may elect to use the other method during any succeeding applicable one-year period.

(4) Effect of failure to meet production standards or value-content requirement in an applicable one-year period. (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 production standards 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 the 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 in the aggregate during that initial applicable one-year period will be denied duty-free treatment;

(B) Those individual entries of apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under § 10.847(a) of this subpart that fail to meet the production standards of § 10.843(a) 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; and

(C) Subject to the provisions of § 10.845 of this subpart, all the 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 basis or in the aggregate, will be ineligible for duty-free treatment during any succeeding applicable one-year period 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.

(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 production standards of § 10.843(a) or the applicable value-content requirement set forth in paragraph (a) of this section, then:

(A) Those individual entries of apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under § 10.847(a) of this subpart that fail to meet the production standards of § 10.843(a) or the applicable value-content requirement during that applicable one-year period will be denied duty-free treatment; and

(B) Subject to the provisions of § 10.845 of this subpart, all the 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 basis or in the aggregate, will be ineligible for duty-free treatment during any succeeding applicable one-year period 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.

(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 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 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 production standards 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 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) Countries described. As used in this section, the term “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 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 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 countries described in paragraph (c) of this section; or

(B) Determined to originate in Haiti or one or more 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 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 countries described in paragraph (c) of this section; or

(B) Substantially transformed in Haiti or one or more 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 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 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 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 of the countries described in paragraph (c) of this section.

(iii) Cost data unavailable. 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.

(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 production standards 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 production standards 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 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.

(b) 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: Textile Enforcement and Operations Division, 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, line value, name and address of the producer(s), and, if applicable, name and address of the entity controlling production;

(iv) If the importer elects to include additional entries in the aggregation calculation (for example, entries of brassieres receiving duty-free treatment under § 10.843(c) of this subpart and entries of apparel articles 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.

**§ 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 production standards 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 of the 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 § IV in numerical order to read as follows:

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

\* \* \* \* \*

IV. \* \* \*

§ 10.848 HOPE Act Declaration of Compliance

\* \* \* \* \*

**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  * * * * *	* * * * *          * * * * *

\* \* \* \* \*

Commissioner of Customs  
Customs and Border Protection

Approved:

Deputy Assistant Secretary of the Treasury