

# Subpart P—United States-Oman Free Trade Agreement

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## General Provisions

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### §10.861 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Oman Free Trade Agreement (the OFTA) signed on January 19, 2006, and under the United States-Oman Free Trade Agreement Implementation Act (the Act; 120 Stat. 1191). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the OFTA and the Act are contained in Parts 24, 162, and 163 of this chapter.

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### §10.862 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* “Claim for preferential tariff treatment” means a claim that a good is entitled to the duty rate applicable under the OFTA to an originating good or other good specified in the OFTA, and to an exemption from the merchandise processing fee;

(b) *Customs duty.* “Customs duty” includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation;

(c) *Days*. “Days” means calendar days;

(d) *Enterprise*. “Enterprise” means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(e) *Foreign material*. “Foreign material” means a material other than a material produced in the territory of one or both of the Parties;

(f) *GATT 1994*. “GATT 1994” means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(g) *Good*. “Good” means any merchandise, product, article, or material;

(h) *Harmonized System*. “Harmonized System (HS)” means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(i) *Heading*. “Heading” means the first four digits in the tariff classification number under the Harmonized System;

(j) *HTSUS*. “HTSUS” means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(k) *Originating*. “Originating” means a good qualifying under the rules of origin set forth in General Note 31, HTSUS, and OFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(l) *Party*. “Party” means the United States or the Sultanate of Oman;

(m) *Person*. “Person” means a natural person or an enterprise;

(n) *Preferential tariff treatment*. “Preferential tariff treatment” means the duty rate applicable under the OFTA to an originating good and an exemption from the merchandise processing fee;

(o) *Subheading*. “Subheading” means the first six digits in the tariff classification number under the Harmonized System;

(p) *Textile or apparel good*. “Textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as “the ATC”), which is part of the WTO Agreement;

(q) *Territory*. “Territory” means:

(1) With respect to Oman, all the lands of Oman within its geographical boundaries, the internal waters, maritime areas including the territorial sea, and airspace under its sovereignty, and the exclusive economic zone and continental shelf where Oman exercises sovereign rights and jurisdiction in accordance with its domestic law and international law, including the United Nations Convention on the Law of the Sea; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(r) *WTO Agreement*. “WTO Agreement” means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

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## **Import Requirements**

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### **§10.863 Filing of claim for preferential tariff treatment upon importation.**

An importer may make a claim for OFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol “OM” as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

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### **§10.864 Declaration.**

(a) *Contents*. An importer who claims preferential tariff treatment for a good under the OFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS;

(3) Must include a statement, in substantially the following form: "I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Oman Free Trade Agreement; and

This document consists of \_\_\_ pages, including all attachments.”

(b) *Responsible official or agent.* The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The declaration must be completed in the English language.

(d) *Applicability of declaration.* The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, “identical goods” means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

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## **§10.865 Importer obligations.**

(a) *General.* An importer who makes a claim for preferential tariff treatment under §10.863 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the OFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in §10.864 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an

exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

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## **§10.866 Declaration not required.**

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under §10.864 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. \$2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the OFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

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## **§10.867 Maintenance of records.**

(a) *General.* An importer claiming preferential tariff treatment for a good under §10.863 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in §163.5 of this chapter.

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## **§10.868 Effect of noncompliance; failure to provide documentation regarding transshipment.**

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under §10.864 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (see §10.880 of this subpart).

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## Post-Importation Duty Refund Claims

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### **§10.869 Right to make post-importation claim and refund duties.**

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in §10.870 of this subpart. Subject to the provisions of §10.868 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with §10.871(c) of this part.

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### **§10.870 Filing procedures.**

(a) *Place of filing.* A post-importation claim for a refund under §10.869 of this subpart must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was

provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(3) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

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## **§10.871 CBP processing procedures.**

(a) *Status determination.* After receipt of a post-importation claim under §10.870 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim. (1) Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for a refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim. (1) General.* The port director may deny a claim for a refund filed under §10.870 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §10.868 and §10.870 of this subpart, or if, following an origin verification under §10.887 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under §10.887 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

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## Rules of Origin

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### §10.872 Definitions.

For purposes of §§10.872 through 10.880:

- (a) *Exporter*. “Exporter” means a person who exports goods from the territory of a Party;
- (b) *Generally Accepted Accounting Principles*. “Generally Accepted Accounting Principles” means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;
- (c) *Good*. “Good” means any merchandise, product, article, or material;
- (d) *Goods wholly the growth, product, or manufacture of one or both of the Parties*. “Goods wholly the growth, product, or manufacture of one or both of the Parties” means:
  - (1) Mineral goods extracted in the territory of one or both of the Parties;
  - (2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;
  - (3) Live animals born and raised in the territory of one or both of the Parties;
  - (4) Goods obtained from live animals raised in the territory of one or both of the Parties;
  - (5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;
  - (6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(6) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer*. “Importer” means a person who imports goods into the territory of a Party;

(f) *Indirect material*. “Indirect material” means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material*. “Material” means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties*. “Material produced in the territory of one or both of the Parties” means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce*. “New or different article of commerce” means, except as provided in §10.873(c) of this subpart, a good that:

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

(2) Has a new name, character, or use distinct from the good or material from which it was transformed;

(j) *Non-originating material*. “Non-originating material” means a material that does not qualify as originating under this subpart or General Note 31, HTSUS;

(k) *Packing materials and containers for shipment*. “Packing materials and containers for shipment” means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods*. “Recovered goods” means materials in the form of individual parts that result from:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good*. “Remanufactured good” means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations.* “Simple combining or packaging operations” means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

(o) *Substantially transformed.* “Substantially transformed” means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that the good loses its separate identity in the manufacturing or processing operation and:

(1) The good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(2) The physical properties of the good or material are changed to a significant extent; or

(3) The operation undergone by the good or material is complex by reason of the number of different processes and materials involved and the time and level of skill required to perform those processes.

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## **§10.873 Originating goods.**

(a) *General.* A good will be considered an originating good under the OFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in §10.872(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 31(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 31(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 31(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 31(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 31, HTSUS.

(b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the OFTA only if the sum of the value of materials

produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in §10.195(a)(2) of this part will apply equally for purposes of this paragraph.

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## **§10.874 Textile or apparel goods.**

(a) *De minimis*—(1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the OFTA because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 31(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers or yarns is not more than seven percent of the total weight of that component.

(2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 31(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the OFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

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## **§10.875 Accumulation.**

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of §10.873 of this subpart and all other applicable requirements of General Note 31, HTSUS.

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## **§10.876 Value of materials.**

(a) *General.* For purposes of §10.873(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

- (1) The price actually paid or payable for the material by the producer of the good;
- (2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;
- (3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and
- (4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

- (1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;
- (2) A reasonable amount for profit; and
- (3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

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## **§10.877 Direct costs of processing operations.**

(a) *Items included.* For purposes of §10.873(b) of this subpart, the words “direct costs of processing operations”, with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

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

- (2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;
- (3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;
- (4) Costs of inspecting and testing the specific good; and
- (5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of §10.873(b) of this subpart, the words “direct costs of processing operations” do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

- (1) Profit; and
- (2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

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## **§10.878 Packaging and packing materials and containers for retail sale and for shipment.**

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under §10.873 of this subpart and General Note 31, HTSUS, except that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in §10.873(b) of this subpart.

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## **§10.879 Indirect materials.**

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under §10.873 of this subpart and General Note 31, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in §10.873(b) of this subpart.

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## **§10.880 Imported directly.**

(a) *General.* To qualify as an originating good under the OFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words “imported directly” mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the OFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was “imported directly” from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

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## **Tariff Preference Level**

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### **§10.881 Filing of claim for tariff preference level.**

A cotton or man-made fiber apparel good described in §10.882 of this subpart that does not qualify as an originating good under §10.873 of this subpart may nevertheless be entitled to preferential tariff treatment under the OFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9916.99.20) immediately above the applicable subheading in Chapter 61 or Chapter 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified.

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### **§10.882 Goods eligible for tariff preference claims.**

Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Oman from fabric or yarn produced or obtained outside the territory of Oman or the United States are eligible for a TPL claim filed under §10.881 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XVI, Chapter 99, HTSUS).

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## **§10.883 [Reserved]**

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## **§10.884 Declaration.**

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in §10.882 of this subpart must submit, at the request of the port director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

- (1) A description of the good, quantity, invoice numbers, and bills of lading;
- (2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;
- (3) A statement as to any yarn or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

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## **§10.885 Transshipment of non-originating apparel goods.**

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words “imported directly” mean:

- (1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or
- (2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or

to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was "imported directly" from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

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## **§10.886 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating apparel goods.**

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in §10.885 of this subpart were met.

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## **Origin Verifications and Determinations**

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## **§10.887 Verification and justification of claim for preferential treatment.**

(a) *Verification.* A claim for preferential treatment made under §10.863 or §10.870 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

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## **§10.888 Issuance of negative origin determinations.**

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under §10.863 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 31, HTSUS, and in §§10.863 through 10.886 of this subpart, the legal basis for the determination.

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## **Penalties**

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## **§10.889 Violations relating to the OFTA.**

All criminal, civil, or administrative penalties which may be imposed upon importers or other parties for violations of the U.S. customs or related laws or regulations will also apply to importations subject to the OFTA.

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## **Goods Returned After Repair or Alteration**

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

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Oman as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Oman, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, “repairs or alterations” means restoration, renovation, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Oman, are incomplete for their intended use and for which the processing operation performed in Oman constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Oman after having been exported for repairs or alterations and which are claimed to be duty free.

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## **Subpart P—United States-Oman Free Trade Agreement**

SOURCE: CBP Dec. 11-01, 76 FR 701, Jan. 6, 2011, unless otherwise noted.

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### **General Provisions**

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### **§10.861 Scope.**

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Oman Free Trade Agreement (the OFTA) signed on January 19, 2006, and under the United States-Oman Free Trade Agreement Implementation Act (the Act; 120 Stat. 1191). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements

of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the OFTA and the Act are contained in Parts 24, 162, and 163 of this chapter.

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## **§10.862 General definitions.**

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* “Claim for preferential tariff treatment” means a claim that a good is entitled to the duty rate applicable under the OFTA to an originating good or other good specified in the OFTA, and to an exemption from the merchandise processing fee;

(b) *Customs duty.* “Customs duty” includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation;

(c) *Days.* “Days” means calendar days;

(d) *Enterprise.* “Enterprise” means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(e) *Foreign material.* “Foreign material” means a material other than a material produced in the territory of one or both of the Parties;

(f) *GATT 1994.* “GATT 1994” means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(g) *Good.* “Good” means any merchandise, product, article, or material;

(h) *Harmonized System.* “Harmonized System (HS)” means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(i) *Heading*. “Heading” means the first four digits in the tariff classification number under the Harmonized System;

(j) *HTSUS*. “HTSUS” means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(k) *Originating*. “Originating” means a good qualifying under the rules of origin set forth in General Note 31, HTSUS, and OFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(l) *Party*. “Party” means the United States or the Sultanate of Oman;

(m) *Person*. “Person” means a natural person or an enterprise;

(n) *Preferential tariff treatment*. “Preferential tariff treatment” means the duty rate applicable under the OFTA to an originating good and an exemption from the merchandise processing fee;

(o) *Subheading*. “Subheading” means the first six digits in the tariff classification number under the Harmonized System;

(p) *Textile or apparel good*. “Textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as “the ATC”), which is part of the WTO Agreement;

(q) *Territory*. “Territory” means:

(1) With respect to Oman, all the lands of Oman within its geographical boundaries, the internal waters, maritime areas including the territorial sea, and airspace under its sovereignty, and the exclusive economic zone and continental shelf where Oman exercises sovereign rights and jurisdiction in accordance with its domestic law and international law, including the United Nations Convention on the Law of the Sea; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(r) *WTO Agreement*. “WTO Agreement” means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

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## Import Requirements

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### **§10.863 Filing of claim for preferential tariff treatment upon importation.**

An importer may make a claim for OFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol “OM” as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

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### **§10.864 Declaration.**

(a) *Contents.* An importer who claims preferential tariff treatment for a good under the OFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS;

(3) Must include a statement, in substantially the following form: "I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Oman Free Trade Agreement; and

This document consists of \_\_\_ pages, including all attachments."

(b) *Responsible official or agent.* The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The declaration must be completed in the English language.

(d) *Applicability of declaration.* The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this

paragraph, “identical goods” means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

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## **§10.865 Importer obligations.**

(a) *General.* An importer who makes a claim for preferential tariff treatment under §10.863 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the OFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in §10.864 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

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## **§10.866 Declaration not required.**

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under §10.864 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. \$2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the OFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

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## **§10.867 Maintenance of records.**

(a) *General.* An importer claiming preferential tariff treatment for a good under §10.863 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in §163.5 of this chapter.

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## **§10.868 Effect of noncompliance; failure to provide documentation regarding transshipment.**

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under §10.864 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* §10.880 of this subpart).

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## **Post-Importation Duty Refund Claims**

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## **§10.869 Right to make post-importation claim and refund duties.**

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential

treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in §10.870 of this subpart. Subject to the provisions of §10.868 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with §10.871(c) of this part.

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## **§10.870 Filing procedures.**

(a) *Place of filing.* A post-importation claim for a refund under §10.869 of this subpart must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(3) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

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## **§10.871 CBP processing procedures.**

(a) *Status determination.* After receipt of a post-importation claim under §10.870 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim.* (1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been

liquidated, the port director will take into account the claim for a refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim. (1) General.* The port director may deny a claim for a refund filed under §10.870 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §10.868 and §10.870 of this subpart, or if, following an origin verification under §10.887 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under §10.887 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

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## Rules of Origin

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### §10.872 Definitions.

For purposes of §§10.872 through 10.880:

(a) *Exporter.* “Exporter” means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles.* “Generally Accepted Accounting Principles” means the recognized consensus or substantial authoritative support in the territory of a Party,

with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good*. “Good” means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties*. “Goods wholly the growth, product, or manufacture of one or both of the Parties” means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(6) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer*. “Importer” means a person who imports goods into the territory of a Party;

(f) *Indirect material*. “Indirect material” means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material*. “Material” means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties*. “Material produced in the territory of one or both of the Parties” means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce*. “New or different article of commerce” means, except as provided in §10.873(c) of this subpart, a good that:

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

(2) Has a new name, character, or use distinct from the good or material from which it was transformed;

(j) *Non-originating material*. “Non-originating material” means a material that does not qualify as originating under this subpart or General Note 31, HTSUS;

(k) *Packing materials and containers for shipment*. “Packing materials and containers for shipment” means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods*. “Recovered goods” means materials in the form of individual parts that result from:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good*. “Remanufactured good” means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations*. “Simple combining or packaging operations” means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

(o) *Substantially transformed*. “Substantially transformed” means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that the good loses its separate identity in the manufacturing or processing operation and:

(1) The good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(2) The physical properties of the good or material are changed to a significant extent; or

(3) The operation undergone by the good or material is complex by reason of the number of different processes and materials involved and the time and level of skill required to perform those processes.

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## **§10.873 Originating goods.**

(a) *General*. A good will be considered an originating good under the OFTA when imported directly from the territory of a Party into the territory of the other Party only if:

- (1) The good is wholly the growth, product, or manufacture of one or both of the Parties;
- (2) The good is a new or different article of commerce, as defined in §10.872(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 31(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or
- (3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 31(h), HTSUS, and:
- (i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 31(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or
- (B) The good otherwise satisfies the requirements specified in General Note 31(h), HTSUS; and
- (ii) The good meets any other requirements specified in General Note 31, HTSUS.
- (b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the OFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.
- (c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in §10.195(a)(2) of this part will apply equally for purposes of this paragraph.

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## **§10.874 Textile or apparel goods.**

- (a) *De minimis*—(1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the OFTA because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 31(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers or yarns is not more than seven percent of the total weight of that component.
- (2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 31(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the OFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

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## **§10.875 Accumulation.**

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of §10.873 of this subpart and all other applicable requirements of General Note 31, HTSUS.

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## **§10.876 Value of materials.**

(a) *General.* For purposes of §10.873(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

- (1) The price actually paid or payable for the material by the producer of the good;
- (2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;
- (3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and
- (4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

- (1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;
- (2) A reasonable amount for profit; and
- (3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

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## **§10.877 Direct costs of processing operations.**

(a) *Items included.* For purposes of §10.873(b) of this subpart, the words “direct costs of processing operations”, with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

- (1) All actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel;
- (2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;
- (3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;
- (4) Costs of inspecting and testing the specific good; and
- (5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of §10.873(b) of this subpart, the words “direct costs of processing operations” do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

- (1) Profit; and
- (2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

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## **§10.878 Packaging and packing materials and containers for retail sale and for shipment.**

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under §10.873 of this subpart and General Note 31, HTSUS, except that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in §10.873(b) of this subpart.

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## **§10.879 Indirect materials.**

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under §10.873 of this subpart and General Note 31, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in §10.873(b) of this subpart.

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## **§10.880 Imported directly.**

(a) *General.* To qualify as an originating good under the OFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words “imported directly” mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the OFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was “imported directly” from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance

with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

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## **Tariff Preference Level**

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### **§10.881 Filing of claim for tariff preference level.**

A cotton or man-made fiber apparel good described in §10.882 of this subpart that does not qualify as an originating good under §10.873 of this subpart may nevertheless be entitled to preferential tariff treatment under the OFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9916.99.20) immediately above the applicable subheading in Chapter 61 or Chapter 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified.

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### **§10.882 Goods eligible for tariff preference claims.**

Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Oman from fabric or yarn produced or obtained outside the territory of Oman or the United States are eligible for a TPL claim filed under §10.881 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XVI, Chapter 99, HTSUS).

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### **§10.883 [Reserved]**

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### **§10.884 Declaration.**

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in §10.882 of this subpart must submit, at the request of the port director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

- (1) A description of the good, quantity, invoice numbers, and bills of lading;
  - (2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;
  - (3) A statement as to any yarn or fabric of a non-Party and the origin of such materials used in the production of the good.
- (b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

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## **§10.885 Transshipment of non-originating apparel goods.**

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words “imported directly” mean:

- (1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or
- (2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was “imported directly” from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

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## **§10.886 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating apparel goods.**

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in §10.885 of this subpart were met.

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## **Origin Verifications and Determinations**

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## **§10.887 Verification and justification of claim for preferential treatment.**

(a) *Verification.* A claim for preferential treatment made under §10.863 or §10.870 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

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## **§10.888 Issuance of negative origin determinations.**

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under §10.863 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 31, HTSUS, and in §§10.863 through 10.886 of this subpart, the legal basis for the determination.

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## Penalties

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### §10.889 Violations relating to the OFTA.

All criminal, civil, or administrative penalties which may be imposed upon importers or other parties for violations of the U.S. customs or related laws or regulations will also apply to importations subject to the OFTA.

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## Goods Returned After Repair or Alteration

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

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Oman as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Oman, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, “repairs or alterations” means restoration, renovation, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Oman, are incomplete for their intended use and for which the processing operation performed in

Oman constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Oman after having been exported for repairs or alterations and which are claimed to be duty free.

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