

§ 10.228

19 CFR Ch. I (4-1-03 Edition)

section justify the importer's claim for preferential treatment.

[T.D. 00-68, 65 FR 59658, Oct. 5, 2000, as amended by T.D. 03-12, 68 FR 13835, Mar. 21, 2003]

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

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

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

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

(3) *Fabric components formed in the United States.* "Fabric components formed in the United States" means components that were knit to shape from yarns in the United States and components that were cut or otherwise produced in the United States from fabric that was formed in the United States by a weaving, knitting, needling, tufting, felting, entangling or other process, whether or not the components incorporate non-textile materials.

(4) *Cost.* "Cost" when used with reference to fabric components formed in the United States means:

(i) The price of the fabric components when last purchased, f.o.b. United States port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. United States port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. United States port of exportation price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if that price is unreasonable, all reasonable expenses incurred in the growth, production, manufacture or other processing of the fabric compo-

nents, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs incurred in transporting the components to the United States port of exportation.

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

(i) The cost of fabric components formed in the United States less the cost or value of any non-textile materials, and less the U.S. producer's expenses for cutting or other processing to create the components other than knitting to shape, that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, that is, fabric not incorporated in a fabric component formed in the United States, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents or, if the price is other than f.o.b. port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing and other finishing operations applied to the fabric if not included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if that cost is unreasonable, all reasonable expenses incurred in the growth, production or manufacture of the fabric, including the cost or value of materials, general expenses and embroidering and dyeing, printing, and other finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing and other costs incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components that were purchased by the producer or entity controlling production, either the f.o.b. port of exportation price of those fabric components as set out in

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

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

(6) *Year*. “Year” means the 1-year period beginning on October 1, 2000, and ending on September 30, 2001, and any of the seven succeeding 1-year periods.

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

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2001, and during any subsequent year, articles described in §10.223(a)(6) of a producer or an entity controlling production will be eligible for preferential treatment only if:

(i) The aggregate cost of fabric components formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that were produced and entered during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric contained in all of those articles of that producer or that entity controlling

production that were produced and entered during that year; or

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

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

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

(A) The articles in question must conform to the description set forth in §10.223(a)(6) and must be both produced and entered within the same year;

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

(C) Fabric components and fabrics that constitute findings or trimmings of foreign origin for purposes of §10.223(c) are not to be considered in determining compliance with the 75 or

85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(D) An article is considered to be produced in the year in which it reaches the condition in which it will be shipped to the United States;

(E) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production during the immediately preceding year, must first establish compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(F) Beginning October 1, 2001, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(1) Will not be eligible for preferential treatment during the following year;

(2) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

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

(G) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls;

(H) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration

of compliance prepared by an entity controlling production;

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

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

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

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

*Example 2.* An entity controlling production of articles that meet the description in §10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

*Example 3.* Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United

States where they are held until the following year; during that following year the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic straps less than 1 inch in width produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the description in §10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 percent standard, the foreign-origin elastic straps are to be disregarded entirely because they constitute findings or trimmings for purposes of §10.223(c), and the front subassemblies are countable as components formed in the United States because they were used in the production of articles that were both produced and entered in the same year.

*Example 4.* A CBTPA beneficiary country producer's entire production of articles that meet the description in §10.223(a)(6) is sent to a U.S. importer in two separate shipments, one covering articles produced and shipped in February and one covering articles produced and shipped in June of the same calendar year; the articles produced and shipped in February do not meet the minimum 75 percent standard but the two shipments, taken together, do meet that standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance for any portion of these two shipments because the articles in the first shipment did not meet the minimum 75 percent standard and the articles in the second shipment were not both produced and entered in the same year and therefore cannot be included either on a declaration of compliance that would apply to the articles of the first shipment or on a declaration of compliance that would apply to articles produced in a different year.

*Example 5.* A producer in the second year begins production of articles exclusively for the U.S. market that meet the description in §10.223(a)(6); the articles do not meet the minimum 75 percent standard until the third year; the articles fail to meet the minimum 75 percent standard during the fourth year; and the articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production in the immediately preceding year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential

treatment during the third year because the 75 percent standard was not met in the immediately preceding (that is, second) year. The producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 75 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

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

also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

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

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

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

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

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

Declaration of Compliance for Brassieres (19 CFR 10.223(a)(6) and 10.228)	
1. Year beginning date: October 1, ____. Year ending date: September 30, ____	Official U.S. Customs Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production):  Full name and address: _____ Telephone number: _____ Facsimile number: _____ Importer identification number: _____	
3. If the preparer is an entity controlling production, provide the following for each producer:  Full name and address: _____ Telephone number: _____ Facsimile number: _____	
4. Aggregate cost of fabric components formed in the United States that were used in the production of all articles that were produced and entered during the year: _____	
5. Aggregate declared customs value of the fabric contained in all articles that were produced and entered during the year: _____	
6. I declare that the aggregate cost of fabric components formed in the United States that were used in the production of all articles that were produced and entered during the year as stated above was at least 75 ____ or 85 ____ (check one) percent of the aggregate declared customs value of the fabric contained in all articles that were produced and entered during the year as stated above.	
7. Authorized signature: _____  Date: _____	8. Name and title (print or type): _____

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

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

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

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

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

(E) In block 6, the 75 percent space should be checked if that figure applies under paragraph (b)(1)(i) of this section for the year identified in block 1, and the 85 percent space should be checked

if that figure applies under paragraph (b)(1)(ii) of this section for the year identified in block 1; and

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

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

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

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

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

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

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

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

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

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

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

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determination in the FEDERAL REGISTER.

[T.D. 01-74, 66 FR 50537, Oct. 4, 2001; 66 FR 51864, Oct. 11, 2001]

### NON-TEXTILE ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

SOURCE: T.D. 00-68, 65 FR 59663, Oct. 5, 2000, unless otherwise noted.

#### § 10.231 Applicability.

Title II of Public Law 106-200 (114 Stat. 251), entitled the United States-Caribbean Basin Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701-2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides for special preferential tariff treatment of certain non-textile articles that are otherwise excluded from duty-free treatment under the CBERA. The provisions of §§ 10.231-10.237 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential tariff treatment pursuant to CBERA section 213(b)(3).

[T.D. 00-68, 65 FR 59663, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000]

#### § 10.232 Definitions.

When used in §§ 10.231 through 10.237, the following terms have the meanings indicated:

**CBERA.** “CBERA” means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701-2707.

**CBTPA beneficiary country.** “CBTPA beneficiary country” means a “beneficiary country” as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

**CBTPA originating good.** “CBTPA originating good” means a good that meets the rules of origin for a good as set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter and as applied under § 10.233(b).

**HTSUS.** “HTSUS” means the Harmonized Tariff Schedule of the United States.

**NAFTA.** “NAFTA” means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

**Preferential tariff treatment.** “Preferential tariff treatment” when used with reference to an imported article means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States with duty and other tariff treatment that is identical to the tariff treatment that would be accorded at that time under Annex 302.2 of the NAFTA to an imported article described in the same 8-digit subheading of the HTSUS that is a good of Mexico.

[T.D. 00-68, 65 FR 59663, Oct. 5, 2000; 65 FR 67264, Nov. 9, 2000]

#### § 10.233 Articles eligible for preferential tariff treatment.

(a) **General.** The preferential tariff treatment referred to in § 10.231 applies to any of the following articles, provided that the article in question is a CBTPA originating good, is imported directly into the customs territory of the United States from a CBTPA beneficiary country, and is not accorded duty-free treatment under U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS (see § 10.26):

(1) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(2) Tuna, prepared or preserved in any manner, in airtight containers;

(3) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(4) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material