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Administrator.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 163

[T.D. 01–74]

RIN 1515–AC89

Preferential Treatment of Brassieres Under the United States-Caribbean Basin Trade Partnership Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement those provisions within the United States-Caribbean Basin Trade Partnership Act (the CBTPA) that establish standards for preferential treatment for brassieres imported from CBTPA beneficiary countries. The regulatory amendments contained in this document involve specifically the methods, procedures and related standards that will apply for purposes of determining compliance with the 75 percent aggregate U.S. fabric components content requirement under the CBTPA brassieres provision.

DATES: Interim rule effective October 4, 2001. Comments must be received on or before December 3, 2001.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other issues: Dick Crichton, Office of Field Operations (202–927–0162).

SUPPLEMENTARY INFORMATION:

Background

United States-Caribbean Basin Trade Partnership Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the ''Act''), Public Law 106–200, 114 Stat. 251. Title II of the Act concerns trade benefits for the Caribbean Basin and is referred to in the Act as the ''United States-Caribbean Basin Trade Partnership Act'' (the ''CBTPA''). Within Subtitle B of Title II of the Act, section 211 sets forth temporary provisions for the purpose of providing additional trade benefits to Caribbean Basin countries designated by the President as CBTPA beneficiary countries.

Subsection (a) of section 211 of the Act revised section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701–2707). The CBI is a duty preference program that applies to exports from those Caribbean Basin countries that have been designated by the President as program beneficiaries. Section 213(b) as amended by section 211(a) of the Act consists of five principal paragraphs. Paragraph (1) of amended section 213(b) lists six categories of goods which are excluded from standard duty-free treatment under the CBI (one of these categories consists of textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date). Paragraph (2) of amended section 213(b) provides, during the ''transition period,'' for the application of preferential treatment (that is, entry in the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels) to specific textile and apparel articles; thus, paragraph (2) operates in part as an exception to the exclusion rule for textile and apparel articles under paragraph (1). Paragraph (3) of amended section 213(b) applies to the goods excluded from CBI duty-free treatment under paragraph (1) other than textile and apparel articles and in effect provides for the application of NAFTA tariff treatment to those goods during the ''transition period.'' Paragraph (4) of amended section 213(b) sets forth regulatory and related standards for purposes of preferential treatment under paragraph (2) or (3) and, among other things, requires the use of Certificate of Origin procedures modeled on the NAFTA. Paragraph (5) of amended section 213(b) sets forth definitions and special rules and, among other things, defines ''transition period'' for purposes of section 213(b) as meaning, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of September 30, 2008, or the date on which a free trade agreement enters into force with respect to the United States and the CBTPA beneficiary country and defines ''CBTPA beneficiary country'' for purposes of section 213(b) as meaning any ''beneficiary country'' as defined in section 212(a)(1)(A) of the CBI statute (19 U.S.C. 2702(a)(1)(A)) which the President designates as a CBTPA beneficiary country.

One of the specific textile and apparel article categories to which preferential treatment may apply during the transition period under paragraph (2) of amended section 213(b) consists of brassieres described in paragraph (2)(A)(iv) as follows:

(iv) CERTAIN OTHER APPAREL ARTICLES.—(I) Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the CBTPA beneficiary countries, or both.

(II) During the 1-year period beginning on October 1, 2001, and during each of the six succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

(III) The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity in the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

Thus, the preferential treatment available to brassieres under the CBTPA amendments represents a departure from historical practice under the CBI which (1) excluded most textile and apparel articles, including brassieres, from CBI duty-free treatment and (2) had no provision regarding exemption from quantitative restrictions, limitations or consultation levels. Although brassieres may receive preferential treatment under the CBTPA during the first year of the ''transition period'' (that is, through September 30, 2001) without regard to any U.S. fabric component content requirement, for each year after that first year the 75 percent U.S. fabric component content

requirement under paragraph (2)(A)(iv)(II) of the statute (or the 85 percent U.S. fabric component content requirement under paragraph (2)(A)(iv)(III) of the statute) must have been met by the producer or entity controlling production for all brassieres produced and entered in the United States during the preceding year in order for the U.S. importer to be able to file a claim for preferential treatment on brassieres during the current year. If a producer or entity controlling production fails to meet the 75 percent standard in a given year, then during the entire following year claims for preferential treatment may not be made on its brassieres and the 85 percent standard must be met in order for its brassieres to be eligible for preferential treatment in the next year. Under the statute, preferential treatment for brassieres under the CBTPA will terminate when the ''transition period'' ends either by adoption of a new trade agreement between the United States and the CBTPA beneficiary country or on September 30, 2008, whichever is earlier. If preferential treatment under the CBTPA terminates without adoption of a new free trade agreement, then the prior CBI regime would come back into operation and brassieres would revert to dutiable status and could be subject to quantitative restrictions, limitations or consultation levels.

Presidential and Regulatory Action Under the CBTPA

On October 2, 2000, President Clinton signed Proclamation 7351 (published in the **Federal Register** at 65 FR 59329 on October 4, 2000) to implement the CBTPA. This Proclamation (1) included a list of countries designated as CBTPA beneficiary countries, (2) authorized the United States Trade Representative to make certain determinations regarding designated beneficiary countries under paragraph (4) of amended section 213(b) and to publish a notice of those determinations and of consequential changes to the HTSUS in the **Federal Register**, and (3) set forth, in an Annex, modifications to the HTSUS to accommodate the preferential treatment and other CBTPA import provisions. Included in those HTSUS modifications was the addition of a new Subchapter XX to Chapter 98 to reflect the specific textile and apparel article provisions of paragraph (2) of amended section 213(b), including, in subheading 9820.11.15, the brassieres of paragraph (2)(A)(iv). Subsequently, on October 10, 2000, the United States Trade Representative published in the **Federal Register** (65 FR 60236) a notice, with an effective date of October 2, 2000, setting forth a determination regarding certain designated CBTPA beneficiary countries and making conforming changes to the HTSUS as required by Proclamation 7351 and thus putting into effect the trade benefit provisions of the CBTPA.

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59650) as T.D. 00–68, with an effective date of October 1, 2000, an interim rule document setting forth amendments to the Customs Regulations which included, among other things, the addition of new §§ 10.221 through 10.227 (19 CFR 10.221 through 10.227) to implement those textile and apparel preferential treatment provisions within paragraphs (2), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures. The regulatory amendments contained in that document reflected and clarified the statutory standards for the trade benefits applicable to textile and apparel articles under the CBTPA and also included specific documentary, procedural and other related requirements that must be met in order to obtain those benefits. Section 10.223(a) of those regulations describes the various categories of textile and apparel articles to which preferential treatment may apply and includes, in paragraph (a)(6), a reference to brassieres as described in paragraph (2)(A)(iv)(I) of amended section 213(b).

The regulatory texts in T.D. 00–68 only set forth the general brassiere product description provision of subclause (I) of paragraph (2)(A)(iv) of the statute and therefore did not address the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv), for two reasons. First, as indicated above, those aggregate cost or value provisions do not have direct application to imported goods until the second year of the statutory 8-year ''transition period.'' Second, there were a number of interpretive and operational issues regarding implementation of the subclause (II) and (III) provisions that Customs was unable to resolve within the relatively short time period available for preparation and timely publication of the basic CBTPA implementing regulations in T.D. 00–68.

Customs recognizes, however, that appropriate regulatory standards should be in place for reference by the general public by October 1, 2001. Customs notes in this regard that subclause (III) of paragraph (2)(A)(iv) requires that Customs develop and implement methods and procedures to ensure ongoing compliance with the aggregate 75 percent U.S.-formed fabric components cost requirement of subclause (II). Moreover, even though the 75 percent aggregate requirement does not control the application of preferential treatment to goods entered prior to October 1, 2001, under the terms of subclause (II) the 75 percent requirement must have been met in the aggregate for all articles entered during each preceding year (that is, starting with the year beginning on October 1, 2000, and ending on September 30, 2001) in order for preferential treatment to be applied to articles entered during the following year (that is, starting with the year that begins on October 1, 2001). Therefore, for purposes of claiming CBTPA preferential treatment on brassieres entered during the period from October 1, 2001, through September 30, 2002, the U.S. importer and the producer or entity controlling production must, for record keeping and related purposes, be aware of the standards Customs will apply in assessing compliance with the 75 percent requirement during that preceding year.

Accordingly, this document sets forth interim amendments to the Customs Regulations to implement the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv) of amended section 213(b). In view of the proximity of the publication date of these interim regulations to October 1, 2001, Customs has issued instructions to the various ports to allow importers to amend their entries as may be necessary to take into account the new procedures and other requirements of these interim regulations. The regulatory amendments are discussed in more detail below.

Discussion of Interim Amendments

Section 10.223(a)(6)

This section has been modified by the addition of a proviso at the end to indicate that the requirements of new § 10.228 also must be met.

Section 10.223(a)(7)

Customs notes that § 10.223(a)(7) covers apparel articles that are constructed of fabrics or yarns that are considered to be in ''short supply'' for purposes of Annex 401 of the NAFTA. Customs further notes that the Annex 401 rule for articles classified in subheading 6212.10, HTSUS, requires only the performance of certain specified production processes (that is, ''both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties'') and includes no requirements regarding the source of the fabrics or yarns. Thus, as the Annex 401 rule for subheading 6212.10, HTSUS, includes no

designation of fabrics or yarns in ''short supply,'' Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by § 10.223(a)(7).

This view is supported by the decision by Congress to create a specific CBTPA provision providing for preferential treatment of brassieres (paragraph (2)(A)(iv) of amended § 213(b), which is reflected in § 10.223(a)(6) of the regulations). Were articles of subheading 6212.10, HTSUS, intended to be included with the articles falling within the scope of § 10.223(a)(7) which corresponds to paragraph (2)(A)(v)(I) of amended section 213(b), Congress would not have created a separate provision with specific fabric sourcing requirements which must be met in order for brassieres of subheading 6212.10, HTSUS, to receive preferential treatment under the CBTPA.

The text of § 10.223(a)(7) has been appropriately modified to reflect this interpretation.

New § 10.228

This new section addresses the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv) of amended section 213(b). Although the text is in most cases self-explanatory, the following specific points are noted regarding this new provision:

1. The definitions of ''cost'' and ''declared customs value'' in paragraphs (a)(4) and (a)(5) are based in part on principles reflected in the Customs Regulations provisions that apply for purposes of subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.17) and under the CBI (see, in particular, 19 CFR 10.196(c)). Moreover, as regards the definition of ''declared customs value'' in paragraph (a)(5), Customs notes that because the circumstance in which this terminology appears in the statute does not relate to a point at which a value is normally declared to U.S. Customs, the text includes multiple factual circumstances that reflect all conditions under which a value of fabric could exist for purposes of comparison to the ''cost'' of fabric components defined in paragraph (a)(4).

2. Paragraph (b)(1) reflects the 75 and 85 percent U.S. fabric component content requirements of paragraphs (2)(A)(iv)(II) and (III) of the statute and also requires the U.S. importer to include a specific documentation identifier assigned by Customs (see the discussion of paragraph (c) below) when filing the claim for preferential treatment. Customs considers a specific documentation identifier necessary. The identifier, which is to be noted on the entry summary or warehouse withdrawal, will serve both the importer and Customs. The identifier serves the importer as it is a method to indicate that the importer has at the time of entry a specific basis for claiming preferential treatment—that either the 75 or the 85 percent requirement has been met in the preceding year—for the brassieres being entered and thus will facilitate the entry and clearance process. The identifier serves Customs as it is a means by which Customs can tie a particular entry to the fact that a producer of brassieres or an entity controlling production of brassieres has met the 75 or 85 percent requirement. This is essential in view of the fact that compliance with the 75 or 85 percent requirement must be established by a producer or by an entity controlling production who might not be the U.S. importer.

3. Paragraph (b)(2) sets forth a number of general rules that Customs believes apply under paragraphs (b)(1)(i) and (b)(1)(ii) and for purposes of preparing and filing the documentation prescribed under paragraph (c) by the producer or entity controlling production. Paragraph (b)(2) also includes some examples to illustrate the application of those rules.

4. Paragraph (c) provides that, in order for an importer to be able to include the distinct and unique identifier on the entry summary or warehouse withdrawal as required under paragraph (b)(1)(iii), the producer or entity controlling production must have filed with Customs a declaration of compliance with the applicable 75 or 85 percent requirement. Paragraph (c) further provides that Customs will advise the filer of the identifier assigned to that declaration of compliance so that the filer may provide that number to the appropriate U.S. importers for inclusion on current entry summaries or warehouse withdrawals covering articles of the producer or entity controlling production in question. So that each affected importer might know what the appropriate identifier is prior to the arrival of the goods in the United States, paragraph (c) provides that the declaration of compliance should be filed at least 10 days prior to the date of the first shipment of the goods to the United States; Customs believes that this 10-day period should afford sufficient time for Customs to assign the identifier to the declaration of compliance and provide the identifier to the producer or entity controlling production and for the producer or entity to then provide it to the appropriate U.S. importer(s). Paragraph (c) also provides for the filing of an amended declaration of compliance or for following other appropriate procedures if the initial filing was based on an estimate because information for the whole year was not available at the time of the initial filing and the final data differs from the estimate, or if the producer or entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information. Finally, paragraph (c) identifies the specific Customs office at which the filing must take place and prescribes the form the declaration of compliance must take and includes instructions for its completion.

5. Paragraph (d) sets forth standards regarding the verification of a declaration of compliance and is similar to the rules that apply for purposes of verification of CBTPA preferential treatment claims under § 10.227 but with changes to reflect the current context. Paragraph (d) also specifies the nature of the accounting books and documents that Customs expects to see when verifying the statements made on a declaration of compliance. Finally, so that affected U.S. importers will know when Customs, after performing a verification of a declaration of compliance, has determined that articles of the producer or entity controlling production in question failed to meet the applicable 75 or 85 percent requirement, paragraph (d) provides that Customs will publish a notice of that determination in the **Federal Register**.

Part 163

The Appendix to Part 163 of the Customs Regulations (19 CFR Part 163), which sets forth a list of entry records (that is, records that are required by statute or regulation for the entry of merchandise—the ''(a)(1)(A)'' list), has been modified by the addition of a listing covering the CBTPA declaration of compliance for brassieres.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs

Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the United States-Caribbean Basin Trade Partnership Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

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

19 CFR Part 163

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

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

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

1. The general authority citation for Part 10 continues to read, and the specific authority citation for §§ 10.221 through 10.227 and §§ 10.231 through 10.237 is revised to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

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

§ 10.222 [Amended]

2. In § 10.222, the introductory text is amended by removing the reference ''10.227'' and adding, in its place, the reference ''10.228''.

§ 10.223 [Amended]

3. In § 10.223, paragraph (a)(6) is amended by adding at the end before the semicolon the words '', provided that any applicable additional requirements set forth in § 10.228 are met'' and paragraph (a)(7) is amended by adding after the words ''Apparel articles'' at the beginning of the sentence the words '', other than articles described in paragraph (a)(6) of this section,''.

4. A new § 10.228 is added under the center heading ''Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act'' to read as follows:

§ 10.228 Additional requirements for preferential treatment of brassieres.

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

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

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

(3) *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 components, 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:

BILLING CODE 4820–02–P

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):

BILLING CODE 4820–02–C

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3) 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) 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)(2) 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 determination in the **Federal Register**.

PART 163—RECORDKEEPING

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

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

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

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

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IV. * * *

§ 10.228 CBTPA Declaration of Compliance for brassieres

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Charles W. Winwood,

Acting Commissioner of Customs.

Approved: October 2, 2001.

Gordana S. Earp,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–24991 Filed 10–2–01; 11:16 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8965]

RIN 1545–AW86

Unified Partnership Audit Procedures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and amended by the Taxpayer Relief Act of 1997 (1997 Act) and the Internal Revenue Service