

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY
19 CFR PARTS 10, 24, 162, 163, and 178

USCBP-2010-0041

CBP Dec. 11-01

RIN 1515-AD68

UNITED STATES – OMAN FREE TRADE AGREEMENT

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the U.S. Customs and Border Protection (“CBP”) regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States – Oman Free Trade Agreement entered into by the United States and the Sultanate of Oman.

DATES: Interim rule effective January 6, 2011; comments must be received by March 7, 2011.

ADDRESSES: You may submit comments, identified by docket number, by *one* of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2010-0041.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229-1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking

process, *see* the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W. (5th Floor), Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of International Trade, (202) 863-6503.

Other Operational Aspects: Seth Mazze, Office of International Trade, (202) 863-6567.

Audit Aspects: Deaune Volk, Office of International Trade, (202) 863-6575.

Legal Aspects: Elif Eroglu, Office of International Trade, (202) 325-0277.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. *See* ADDRESSES above for information on how to submit comments.

Background

On January 19, 2006, the United States and the Sultanate of Oman (the “Parties”) entered into the U.S. – Oman Free Trade Agreement (“OFTA” or “Agreement”). The stated objectives of the OFTA include creating new employment opportunities and raising the standard of living for the citizens of the Parties by liberalizing and expanding trade between them; enhancing the competitiveness of the enterprises of the Parties in global markets; establishing clear and mutually advantageous rules governing trade between the Parties; elimi-

nating bribery and corruption in international trade and investment; fostering creativity and innovation by improving technology and enhancing the protection and enforcement of intellectual property rights; strengthening the development and enforcement of labor and environmental laws and policies; and establishing an expanded free trade area in the Middle East, thereby contributing to economic liberalization and development in the region.

The provisions of the OFTA were adopted by the United States with the enactment of the United States – Oman Free Trade Agreement Implementation Act (the “Act”), Pub. L. 109–283, 120 Stat. 1191 (19 U.S.C. 3805 note), on September 26, 2006. Section 206 of the Act requires that regulations be prescribed as necessary (following implementation of the OFTA by presidential proclamation).

On December 29, 2008, President Bush signed Proclamation 8332 to implement the provisions of the OFTA. The proclamation, which was published in the **Federal Register** on December 31, 2008 (73 FR 80289), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 4050 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 31, incorporating the relevant OFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the OFTA where the special program indicator “OM” appears in parenthesis in the “Special” rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XVI to Chapter 99 to provide for temporary tariff rate quotas and applicable safeguards implemented by the OFTA.

U.S. Customs and Border Protection (“CBP”) is responsible for administering the provisions of the OFTA and the Act that relate to the importation of goods into the United States from Oman. Those customs-related OFTA provisions that require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Establishment of Free Trade Area and Definitions), Chapter Two (Market Access), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin), and Chapter Five (Customs Administration).

These implementing regulations incorporate certain general definitions set forth in Article 1.3 of the OFTA. These regulations also implement Article 2.6 (Goods Re-entered after Repair or Alteration) of the OFTA.

Chapter Three of the OFTA sets forth the measures relating to trade in textile and apparel goods between Oman and the United States under the OFTA. The provisions within Chapter Three that require regulatory action by CBP are Article 3.2 (Rules of Origin and

Related Matters), Article 3.3 (Customs Cooperation for Textile and Apparel Goods), and Article 3.5 (Definitions).

Chapter Four of the OFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Oman (OFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as specified in the Agreement. Under Article 4.1, originating goods may be grouped in three broad categories: (1) goods that are wholly the growth, product, or manufacture of one or both of the Parties; (2) goods (other than those covered by the product-specific rules set forth in Annex 3-A or Annex 4-A) that are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties, and that have a minimum value-content, *i.e.*, at least 35 percent of the good's appraised value must be attributed to the cost or 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; and (3) goods that satisfy the product-specific rules set forth in Annex 3-A (textile or apparel goods) or Annex 4-A (certain non-textile or non-apparel goods).

Article 4.2 explains that the term "new or different article of commerce" means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Article 4.3 provides that a good will not be considered to be a new or different article of commerce as the result of undergoing simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

Article 4.4 provides for the accumulation of production in the territory of one or both of the Parties in determining whether a good qualifies as originating under the OFTA. Articles 4.5 and 4.6 set forth the rules for calculating the value of materials and the direct costs of processing operations, respectively, for purposes of determining whether a good satisfies the 35 percent value-content requirement.

Articles 4.7 through 4.9 consist of additional sub-rules applicable to originating goods, involving packaging and packing materials and containers for retail sale and for shipment, indirect materials, and transit and transshipment. In addition, Articles 4.10 and 4.11 set forth the procedural requirements that apply under the OFTA, in particular with regard to importer claims for preferential tariff treatment. Article 4.14 provides definitions of certain terms used in

Chapter Four of the OFTA. The basic rules of origin in Chapter Four of the OFTA are set forth in General Note 31, HTSUS.

Chapter Five sets forth the customs operational provisions related to the implementation and administration of the OFTA.

In order to provide transparency and facilitate their use, the majority of the OFTA implementing regulations set forth in this document have been included within new Subpart P in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which OFTA implementation is more appropriate in the context of an existing regulatory provision, the OFTA regulatory text has been incorporated in an existing Part within the CBP regulations. In addition, this document sets forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new OFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Oman for which, like goods originating in Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, or Bahrain, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of OFTA Article 2.5 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart P

General Provisions

Section 10.861 outlines the scope of new Subpart P, Part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart P, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart P, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.862 sets forth definitions of common terms used in multiple contexts or places within Subpart P, Part 10. Although the majority of the definitions in this section are based on definitions

contained in Article 1.3 of the OFTA and section 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited Subpart P, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.863 sets forth the procedure for claiming OFTA tariff benefits at the time of entry.

Section 10.864, as provided in OFTA Article 4.10(b), requires a U.S. importer, upon request, to submit a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. Included in § 10.864 is a provision that the declaration may be used either for a single importation or for multiple importations of identical goods.

Section 10.865 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment under the OFTA. As provided in OFTA Article 4.10(a), this section states that a U.S. importer who makes a claim for preferential tariff treatment for a good is deemed to have certified that the good qualifies for such treatment.

Section 10.866 provides that the importer's declaration is not required for certain non-commercial or low-value importations.

Section 10.867 implements the portion of OFTA Article 4.10 concerning the maintenance of records necessary for the preparation of the declaration.

Section 10.868, which is based on OFTA Article 4.11.1, provides for the denial of OFTA tariff benefits if the importer fails to comply with any of the requirements of Subpart P, Part 10, CBP regulations.

Post-Importation Duty Refund Claims

Sections 10.869 through 10.871 implement OFTA Article 4.11.4, which allows an importer, who did not claim OFTA tariff benefits on a qualifying good at the time of importation, to make a claim for preferential treatment and apply for a refund of any excess duties paid no later than one year after the date of importation.

Rules of Origin

Sections 10.872 through 10.880 provide the implementing regulations regarding the rules of origin provisions of General Note 31, HTSUS, Article 3.2 and Chapter Four of the OFTA, and section 202 of the Act .

Definitions

Section 10.872 sets forth terms that are defined for purposes of the rules of origin.

General Rules of Origin

Section 10.873 includes the basic rules of origin established in Article 4.1 of the OFTA, section 202(b) of the Act, and General Note 31(b), HTSUS.

Paragraph (a) of § 10.873 sets forth the three basic categories of goods that are considered originating goods under the OFTA. Paragraph (a)(1) of § 10.873 specifies those goods that are considered originating goods because they are wholly the growth, product, or manufacture of one or both of the Parties. Paragraph (a)(2) provides that goods are considered originating goods if they: (1) are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties; (2) are classified in HTSUS provisions that are not covered by the product-specific rules set forth in General Note 31(h), HTSUS; and (3) meet a 35 percent domestic-content requirement. Finally, paragraph (a)(3) states that goods are considered originating goods if: (1) they are classified in HTSUS provisions that are covered by the product-specific rules set forth in General Note 31(h), HTSUS; (2) each non-originating material used in the production of the good in the territory of one or both of the Parties undergoes an applicable change in tariff classification or otherwise satisfies the requirements specified in General Note 31(h), HTSUS; and (3) the goods meet any other requirements specified in General Note 31, HTSUS.

Paragraph (b) of § 10.873 sets forth the basic rules that apply for purposes of determining whether a good satisfies the 35 percent domestic-content requirement referred to in § 10.873(a)(2).

Paragraph (c) of § 10.873 implements Article 4.3 of the OFTA, relating to the simple combining or packaging or mere dilution exceptions to the “new or different article of commerce” requirement of § 10.873(a)(2). Since the language in Article 4.3 of the OFTA (and section 202(i)(7)(B) of the Act) is nearly identical to the language found in section 213(a)(2) of the Caribbean Basin Economic Recovery Act (“CBERA”) (19 U.S.C. 2703(a)(2)), § 10.873(c) incorporates by reference the examples and principles set forth in 10.195(a)(2) of CBP’s implementing CBERA regulations.

Originating Textile or Apparel Goods

Section 10.874(a), as provided for in Article 3.2.6 of the OFTA, sets forth a *de minimis* rule for certain textile or apparel goods that may be considered to qualify as originating goods even though they fail to satisfy the applicable change in tariff classification set out in General Note 31(h). This paragraph also includes an exception to the *de minimis* rule.

Section 10.874(b), which is based on Article 3.2.7 of the OFTA, sets forth a special rule for textile or apparel goods classifiable under General Rule of Interpretation 3, HTSUS, as goods put up in sets for retail sale.

Accumulation

Section 10.875, which is derived from OFTA Article 4.4, sets forth the rule by which originating goods or materials from the territory of a Party that are used in the production of a good in the territory of the other Party will be considered to originate in the territory of such other Party. In addition, this section also establishes that a good or material that is produced by one or more producers in the territory of one or both of the Parties is an originating good or material if the article satisfies all of the applicable requirements of the rules of origin of the OFTA.

Value of Materials

Section 10.876 implements Article 4.5 of the OFTA, relating to the calculation of the value of materials that may be applied toward satisfaction of the 35 percent value-content requirement.

Direct Costs of Processing Operations

Section 10.877, which reflects Article 4.6 of the OFTA, sets forth provisions regarding the calculation of direct costs of processing operations for purposes of the 35 percent value-content requirement.

Packaging and Packing Materials and Containers for Retail Sale and for Shipment

Section 10.878 is based on Article 4.7 of the OFTA and provides that retail packaging materials and packing materials for shipment are to be disregarded in determining whether a good qualifies as originating under the OFTA, except that the value of such packaging and packing materials may be included for purposes of meeting the 35 percent value-content requirement.

Indirect Materials

Section 10.879, which is derived from Article 4.8 of the OFTA, provides that indirect materials will be disregarded in determining whether a good qualifies as an originating good under the OFTA, except that the cost of such indirect materials may be included toward satisfying the 35 percent value-content requirement.

Imported Directly

Section 10.880(a) sets forth the basic rule, found in Article 4.1 of the OFTA, that a good must be imported directly from the territory of a Party into the territory of the other Party to qualify as an originating good under the OFTA. This paragraph further provides that, as set forth in Article 4.9 of the OFTA, a good will not be considered to be imported directly if, after exportation from the territory of a Party, the good undergoes production, manufacturing, or any other operation outside the territories of the Parties, other than certain minor operations.

Paragraph (b) of § 10.880 provides that an importer making a claim for preferential tariff treatment under the OFTA may be required to demonstrate, through the submission of documentary evidence, that the “imported directly” requirement was satisfied.

Tariff Preference Level

Section 10.881 sets forth the procedures for claiming OFTA tariff benefits for certain non-originating cotton or man-made fiber apparel goods entitled to preference under an applicable tariff preference level (“TPL”).

Section 10.882, which is based on Article 3.2.8, describes the non-originating cotton or man-made fiber apparel goods that are eligible for TPL claims under the OFTA.

Section 10.884 reflects Article 3.2.11 of the OFTA. Paragraph (a) of § 10.884 provides that an importer claiming preferential treatment on a non-originating cotton or man-made fiber apparel good specified in § 10.882 must submit, at the request of the port director, a declaration setting forth all pertinent production information. Paragraph (b) of § 10.884 requires that an importer must retain all records relied upon to prepare the declaration for a period of five years.

Section 10.885 establishes that non-originating cotton or man-made fiber apparel goods are entitled to preferential tariff treatment under an applicable TPL only if they are imported directly from the territory of a Party into the territory of the other Party.

Section 10.886 provides for the denial of a TPL claim if the importer fails to comply with any applicable requirement under Subpart P,

Part 10, CBP regulations, including the failure to provide documentation, when requested by CBP, establishing that the good was imported directly from the territory of a Party into the territory of the other Party.

Origin Verifications and Determinations

Sections 10.887 implements OFTA Article 4.11.2 by providing that a claim for OFTA preferential tariff treatment, including any information submitted in support of the claim, will be subject to such verification as CBP deems necessary. This section further sets forth the circumstances under which a claim may be denied based on the results of the verification.

Section 10.888 implements OFTA Article 4.11.3 by providing that CBP will issue a determination to the importer when CBP determines that a claim for OFTA preferential tariff treatment should be denied based on the results of a verification. This section also prescribes the information required to be included in the determination.

Penalties

Section 10.889 concerns the general application of penalties to OFTA transactions and is based on OFTA Article 5.9.

Goods Returned After Repair or Alteration

Section 10.890 implements OFTA Article 2.6 regarding duty treatment of goods re-entered after repair or alteration in Oman.

Part 24

A paragraph is added to § 24.23(c), which concerns the merchandise processing fee (MPF) to implement section 203 of the Act, providing that the MPF is not applicable to goods that qualify as originating goods of Oman or the United States as provided for under section 202 of the Act.

Part 162

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional OFTA records maintenance and examination provisions contained in new Subpart P, Part 10, CBP regulations.

Part 163

A conforming amendment is made to § 163.1 to include the maintenance of any documentation that the importer may have in support

of a claim for preference under the OFTA as an activity for which records must be maintained. Also, the list or records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list)) is also amended to add the OFTA records that the importer may have in support of a OFTA claim for preferential tariff treatment.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the OFTA and the Act.

Inapplicability of Notice and Delayed Effective Date Requirements

Under section 553 of the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the OFTA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider comments it receives before issuing a final rule.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the

Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in these regulations are under review by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information in these regulations are in §§ 10.863, 10.864, 10.881, and 10.884. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the OFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the OFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 20 hours.

Estimated average annual burden per respondent: 12 minutes.

Estimated number of respondents: 100.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Financial and accounting procedures.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

1. The general authority citation for Part 10 continues to read, and the specific authority for new Subpart P is added to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.861 through 10.890 also issued under 19 U.S.C. 1202 (General Note 31, HTSUS) and Pub. L. 109–283, 120 Stat. 1191 (19 U.S.C. 3805 note).

2. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, or Oman and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27, 29, 30, and 31, HTSUS, in the country of which the importer is a resident.

* * * * *

3. Part 10, CBP regulations, is amended by adding Subpart P to read as follows:

Subpart P - United States-Oman Free Trade Agreement

Sec.

General Provisions

10.861 Scope.

10.862 General definitions.

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10.863 Filing of claim for preferential tariff treatment upon importation.

10.864 Declaration.

10.865 Importer obligations.

10.866 Declaration not required.

10.867 Maintenance of records.

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

Post – Importation Duty Refund Claims

- 10.869 Right to make post-importation claim and refund duties.
- 10.870 Filing procedures.
- 10.871 CBP processing procedures.

Rules of Origin

- 10.872 Definitions.
- 10.873 Originating goods.
- 10.874 Textile or apparel goods.
- 10.875 Accumulation.
- 10.876 Value of materials.
- 10.877 Direct costs of processing operations.
- 10.878 Packaging and packing materials and containers for retail sale and for shipment.
- 10.879 Indirect materials.
- 10.880 Imported directly.

Tariff Preference Level

- 10.881 Filing of claim for tariff preference level.
- 10.882 Goods eligible for tariff preference claims.
- 10.883 [Reserved]
- 10.884 Declaration.
- 10.885 Transshipment of non-originating apparel goods.
- 10.886 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating apparel goods.

Origin Verifications and Determinations

- 10.887 Verification and justification of claim for preferential treatment.
- 10.888 Issuance of negative origin determinations.

Penalties

10.889 Violations relating to the OFTA.

Goods Returned After Repair or Alteration

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

SUBPART P - UNITED STATES-OMAN FREE TRADE AGREEMENT

General Provisions

§ 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.

§ 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.

Import Requirements

§ 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 sub-heading 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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).

Post – Importation Duty Refund Claims

§ 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.

§ 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.

§ 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.

Rules of Origin

§ 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.

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.

§ 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 consid-

ered 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

Tariff Preference Level

§ 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.

§ 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).

§ 10.883 [Reserved]

§ 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.

§ 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.

§ 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.

Origin Verifications and Determinations

§ 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.

§ 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.

Penalties

§ 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.

Goods Returned After Repair or Alteration

§ 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.

PART 24 – CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

4. The general authority citation for Part 24 and the specific authority for § 24.23 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

5. Section 24.23 is amended by adding a new paragraph (c)(10) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(10) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States – Oman Free Trade Agreement Implementation Act (see also General Note 31, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2009.

* * * * *

PART 162 - INSPECTION, SEARCH, AND SEIZURE

6. The authority citation for Part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

7. Section 162.0 is amended by revising the last sentence to read as follows:

§ 162.0 Scope.

* * *

Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the Dominican Republic-Central America-U.S. Free Trade Agreement, the U.S.-Morocco Free

Trade Agreement, the U.S.-Bahrain Free Trade Agreement, and the U.S.-Oman Free Trade Agreement are contained in Part 10, Subparts H, I, J, M, N, and P of this chapter, respectively.

PART 163 - RECORDKEEPING

8. 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.

9. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(xii) as paragraph (a)(2)(xiii) and adding a new paragraph (a)(2)(xii) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(xii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Oman Free Trade Agreement (OFTA), including a OFTA importer's declaration.

* * * * *

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

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

* * * * *

IV. * * *

§ 10.865 OFTA records that the importer may have in support of an OFTA claim for preferential tariff treatment, including an importer's declaration.

§ 10.883 OFTA TPL certificate of eligibility.

§ 10.884 OFTA TPL declaration.

* * * * *

PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

11. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

12. Section 178.2 is amended by adding new listings “§§ 10.863, 10.864, 10.881, and 10.884” to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
* *	* * *	* *
§§ 10.863, 10.864, 10.881, and 10.884.	Claim for preferential tariff treatment under the U.S.-Oman Free Trade Agreement.	1651-0117
* *	* * *	* *
* *	* * *	* *

Dated: December 28, 2010

ALAN BERSIN
Commissioner
U.S. Customs and Border Protection

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

CUSTOMS BROKERS USER FEE PAYMENT FOR 2011

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice

SUMMARY: This document provides notice to customs brokers that the annual fee of \$138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by March 18, 2011. Customs and Border Protection announces this date of payment for 2011 in accordance with the Tax Reform Act of 1986.

DATES: Payment of the 2011 Customs Broker User Fee is due March 18, 2011.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Broker Compliance Branch, Trade Policy and Programs, (202) 863 - 6543.

SUPPLEMENTARY INFORMATION:***Background***

CBP Dec. 07–01 amended section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)) pursuant to the amendment of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by section 892 of the American Jobs Creation Act of 2004, to establish that effective April 1, 2007, an annual user fee of \$138 is to be assessed for each customs broker permit and national permit held by an individual, partnership, association, or corporation.

The Customs and Border Protection (CBP) regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the Federal Register annually. *See* 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, “Geographical Boundaries of Customs Brokerage, Cartage and Light-erage Districts” published in the Federal Register on September 27, 1995 (60 FR 49971).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the Federal Register by no later than 60 days before such due date. Please note that section 403 of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, (Pub. L. 107–296) and Treasury Department Order No. 100–16 (see Appendix to 19 CFR Part 0) delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

This document notifies customs brokers that for calendar year 2011, the due date for payment of the user fee is March 18, 2011. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on or about the twentieth of January of each year.

Dated: December 29, 2010

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade