

**Register** (66 FR 50534) T.D. 01–74 to amend the Customs Regulations on an interim basis in order to implement the terms of subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute and U.S. Note 2(d) of Subchapter XX, Chapter 98, HTSUS. Those regulatory amendments involved primarily the addition of a new § 10.228 which set forth specific rules for the application of the minimum 75 and 85 percent U.S. fabric component content requirements under subclauses (II) and (III) that took effect for purposes of preferential treatment of brassieres described in subclause (I) starting on October 1, 2001.

#### *Trade Act of 2002 Amendments*

On August 6, 2002, the President signed into law the Trade Act of 2002 (the “Act”), Public Law 107–210, 116 Stat. 933. Section 3107(a) of the Act made a number of changes to the textile and apparel provisions of paragraph (2)(A) of section 213(b) of the CBERA. The amendments made by section 3107(a) of the Act included a revision of the brassieres provisions of paragraph (2)(A)(iv) of the statute which involved the following textual changes: (1) Subclause (I) was amended by the addition of exception language regarding articles covered by certain other clauses under paragraph (2)(A); and (2) subclauses (II) and (III) were amended by replacing each reference to “fabric components” with “fabrics,” by adding exclusion language regarding findings and trimmings after each reference to fabric(s), and by adding various references to articles that are “entered” and that are “eligible” under clause (iv). The principal effects of the language changes within subclauses (II) and (III) were: (1) Adoption of a cost or value percentage standard based on a comparison between U.S. fabric and all fabric (rather than based on a comparison between U.S. fabric components and all fabric) contained in the articles; and (2) removal of the requirement that the articles must be both produced and entered in the same year. The amended paragraph (2)(A)(iv) text now reads as follows:

(iv) CERTAIN OTHER APPAREL ARTICLES.—(I) GENERAL RULE.—Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both.

(II) LIMITATION.—During the 1-year period beginning on October 1, 2001, and during each of the 6 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 fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—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 fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

On November 13, 2002, the President signed Proclamation 7626 (published in the **Federal Register** at 67 FR 69459 on November 18, 2002) which included, among other things, modifications to the HTSUS to implement the changes to section 213(b)(2)(A) of the CBERA made by section 3107(a) of the Act. Those modifications included an amendment of U.S. Note 2(d) to Subchapter XX, Chapter 98, HTSUS, to reflect the changes to subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute discussed above. The Proclamation further provided that this amendment of U.S. Note 2(d) was effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

#### *Changes to the Interim Regulatory Texts*

As a consequence of the statutory amendments described above and as a result of the modifications to the HTSUS made by Proclamation 7626, the interim regulatory provisions published in T.D. 01–74 no longer reflect the current standards that apply for purposes of preferential treatment of brassieres under the CBERA. CBP notes in this regard that the effect of the statutory changes requires changes

throughout the text of interim § 10.228. Moreover, following publication of T.D. 01–74, some other issues came to the attention of CBP that warrant additional changes to the interim § 10.228 text.

Accordingly, this interim rule document revises interim § 10.228 in its entirety to reflect the amendments to the statute and to clarify or otherwise improve the previously published text. This document is limited to the text of interim § 10.228 and therefore does not address the change that the Act made to paragraph (2)(A)(iv)(I) of the statute; that provision was reflected in § 10.223(a)(6) within the interim CBTPA regulations published in T.D. 00–68 referred to above and is discussed in a separate interim rule document that addresses the other statutory changes to the CBERA made by the Act.

It is the intention of CBP, after the close of the public comment period prescribed in this document, to publish one final rule document that addresses the revised § 10.228 provisions contained in this document and the other regulatory changes pertaining to brassieres under the CBTPA that were published in T.D. 01–74. That final rule document will summarize and respond to the public comments previously submitted on the changes to §§ 10.222 and 10.223(a)(7) published in T.D. 01–74 and will also address any comments submitted on the revised § 10.228 text set forth in this document. Because CBP has significantly modified § 10.228 in this document, CBP will not consider or address any public comments previously submitted on the text of § 10.228 as published in T.D. 01–74 that have been addressed by statutory changes. Any other comments previously submitted will be addressed. If a member of the public wishes to have CBP consider a new issue involving § 10.228, a new comment setting forth that issue may be submitted in accordance with the comment procedures prescribed in this document.

The interim regulatory changes to § 10.228 contained in this document are discussed below.

#### *Amendments To Reflect the Statutory Changes*

The changes to § 10.228 set forth in this document that are in response to the changes made to paragraph (2)(A)(iv) of the statute by section 3107(a) of the Act are as follows:

1. The definition of “fabric components formed in the United States” in paragraph (a)(3) has been replaced by a definition of “fabrics formed in the United States” to reflect the fact that subclauses (II) and (III) of the statute no longer refer to fabric