

August 3, 2006

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS

FROM: Executive Director, Trade Enforcement and Facilitation
Office of Field Operations

SUBJECT: US-Bahrain Free Trade Agreement Implementation
Instructions

Background

The US-Bahrain Free Trade Agreement Implementation Act ("the Act"; Public Law 109-169; 119 Stat. 3581; 19 U.S.C. 3805 note) was signed on January 11, 2006. The Act allowed for the Agreement to take effect on or after January 1, 2006 with the actual implementation date to be determined by the President. Sections 101 and 103 of the Act authorize the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods of Bahrain provided for under the Agreement. The final text of the Agreement can be found on-line at the U.S. Trade Representative (USTR) website at:

<http://www.ustr.gov>

Presidential Proclamation 8039, dated July 27, 2006 and published in the Federal Register on August 1, 2006, implemented the US-Bahrain Free Trade Agreement (US-BFTA) for goods entered or withdrawn from warehouse for consumption on or after August 1, 2006. The Proclamation incorporated, by reference, Publication 3830 of the United States International Trade Commission (USITC). Annex I of Publication 3830 of the USITC, amends the Harmonized Tariff Schedule (HTS) by adding a new General Note 30 containing specific information regarding the US-BFTA and a new Subchapter XIV to Chapter 99 to provide for temporary tariff rate quotas (TRQs) implemented by the US-BFTA.

Annex II of Publication 3830 amends the HTS to provide for immediate and staged tariff reductions. Publication 3830 has been posted to the USITC's website at:

<http://www.usitc.gov>

The Agreement provides for the immediate or staged elimination of duties and barriers to bilateral trade in goods and services originating in the U.S. and/or Bahrain.

This memorandum provides instruction for the filing and acceptance of claims for preferential treatment of goods made under the US-BFTA.

Title 19, Code of Federal Regulations will be amended to implement the Agreement and the Act. Accordingly, these instructions are subject to change until the regulations are issued.

General Rules of Origin

Section 202 of the US-BFTA Implementation Act specifies the general rules of origin to be used in determining if a good qualifies for preferential tariff treatment under the Agreement. The HTS has been amended to include General Note 30, containing rules of origin, definitions and other provisions used to determine whether a good originates under the US-BFTA.

Generally, under the US-BFTA, a good shall qualify for preferential tariff treatment as a “product of Bahrain” if:

- a. the good is wholly obtained or produced entirely in Bahrain, the U.S. or both;
- b. for goods other than those covered by (c) below, the good is a new or different article of commerce that has been grown, produced, or manufactured in the territory of Bahrain, the U.S. or both; and the sum of
 - (i) the value of materials produced in the territory of one or both of the Parties, plus
 - (ii) the direct costs of processing operations performed in the territory of one or both of the Parties is not less than 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or
- c. textile or apparel goods specified in Annex 3-A or agricultural goods specified in Annex 4-A undergo an applicable change in tariff classification specified in General Note 30(h).

For purposes of the US-BFTA, the expression “a 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 Bahrain, the U.S. or both and that has a new name, character, or use distinct from the good or material from which it was transformed.

A good, which has undergone simple combining or packaging operations or mere dilution with water or other substances, shall not be considered originating.

Cumulation

The US-BFTA contains a “cumulation” provision, which provides that the value of materials produced and the direct costs of processing performed in the U.S. or Bahrain may be counted without limitation toward satisfying the 35 percent value-content requirement.

An originating good grown, produced, or manufactured in the territory of Bahrain, the U.S. or both, and incorporated into a good in the territory of one Party shall be considered to originate in the other Party.

A good grown, produced, or manufactured in the territory of Bahrain, the U.S. or both by one or more producers shall be an originating good, provided that it satisfies the requirements of the Agreement.

Textiles and Apparel

Textiles and apparel products may qualify as originating under US-BFTA if they meet the requirements specified in the Agreement. The duty rate for these goods will be “free” as identified in the “Special” column. Although there are differences, these requirements are similar to the NAFTA.

Below is a summary of the type of processes required for some of the more basic products in order for them to be considered eligible for US-BFTA. There are exceptions to these requirements, depending on the specific type of product it is. For more specific information refer to General Note 30(h) for the specific tariff shift rules for the article being imported.

- a) Yarn – generally, fiber must originate in Bahrain or U.S. in order to qualify for preferential tariff treatment.
- b) Fabric – generally, yarn must originate in Bahrain or U.S. to qualify for preferential tariff treatment. Cotton and man-made knit fabric are under fiber forward rules.
- c) Apparel – generally, yarn must originate in Bahrain or U.S. in order to qualify for preferential tariff treatment.

Tariff Preference Levels (TPL) Textiles & Apparel – Quantitative Restraint

A TPL has been established for qualifying cotton and manmade fiber apparel, fabric and made-up goods. These TPLs are:

- 1) The TPL covers cotton and manmade fiber fabric goods provided for in Chapters 52, 54, 55, 58 and 60 of the HTS. The fabrics must be wholly formed in Bahrain, regardless of the origin of the fiber or yarn used to produce the goods.

- 2) A TPL also applies to certain cotton and manmade fiber fabric goods provided for in certain chapter 58 and 60 HTS numbers that are wholly formed in the territory of Bahrain from yarn spun in the territory of Bahrain or the U.S. from fiber produced or obtained from outside of the territories of Bahrain or the U.S.
- 3) The TPL also covers cotton and manmade fiber apparel goods provided for in Chapters 61 and 62 of the HTS. The apparel goods must be cut or knit to shape, or both, and sewn or otherwise assembled in Bahrain, regardless of the origin of the fabric or yarn used to produce the goods.
- 4) Additionally, the TPL covers cotton and manmade fiber made-up articles provided for in Chapter 63, regardless of the origin of the yarn used to produce the goods.

This TPL is provided for in Chapter 99, Subchapter XIV, Note 13 (a-d) and is covered by HTS number 9914.99.20.

To date, there is no requirement that a certificate of eligibility issued by the government of Bahrain be submitted to make entry under the TPL.

Other Textile and Apparel Goods of Bahrain

If a good does not qualify as originating under US-BFTA or under the established TPLs, but it is still considered to be a product of Bahrain, then the normal trade relations rate under column 1 would apply.

De Minimis (Textiles)

A textile or wearing apparel good that is not an originating good 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 30, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component.

Notwithstanding the preceding paragraph regarding de minimis, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

Treatment of Sets (Textiles)

Notwithstanding the specific rules of origin set out in General Note 30, textile or apparel goods classified under General Rule of Interpretation 3 of the HTS as goods put up in sets for retail sale shall not be regarded as originating goods 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 value of the set as determined for purposes of assessing customs duties.

Agricultural Tariff Rate Quotas (TRQ)

The US-BFTA provides ten quantitative restraints associated with a reduced duty rate for agricultural products such as cheese, butter, dairy products, beef, cotton, and tobacco. The Chapter 99 HTS numbers that cover the agricultural quotas include 9914.02.05 through 9914.52.40.

Quota (TPL AND TRQ)

For TPL goods and agricultural products subject to a tariff-rate quota, the Special Program Indicator (SPI) "BH" must be placed in front of the Heading 9914 HTS number when the entry is filed. In addition to the 9914 number, the appropriate Chapter 1-97 HTS number must be identified on the CBP form 7501.

The application of tariff rate quotas for the US-BFTA will be addressed in separate instructions issued in the form of QBTs by the Headquarters Quota Branch. These instructions are available to CBP field officers as well as the importing community and include the quota period, procedures for quota openings, restraint limits, applicable HTS numbers, and any special processing instructions. These messages are posted on the CBP Internet site, www.cbp.gov, under the TEXTILES AND QUOTA section of the IMPORT page. In addition to QBTs, there is also a link to the Commodity Status Report. This weekly report lists the fill rates for the tariff rate quotas. The past four reports are maintained on the site.

Eligible Articles (Non-Textile and Textile) / Immediate and Staged Reductions

The list of HTS item numbers that are eligible for immediate duty free treatment can be found in Annex II of Publication 3830, posted to the USITC website.

Information Necessary to Make a Claim

A claim for preferential tariff treatment may be filed at the time of entry summary by placing the symbol "BH" as a prefix to the HTS subheading for each good or line item for which treatment is being claimed.

The importer may make a claim for preferential tariff treatment based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good according to the rules of origin. The importer must be prepared to submit upon CBP's request a signed declaration with the data elements outlined in Attachment A as well as manufacturing, cost and other data necessary to substantiate compliance with the Agreement. The declaration need not be in a prescribed format, may be submitted electronically and may cover a single shipment or multiple shipments of identical goods not to exceed the time period of 12 months.

Importers are required to maintain for five years after the date of importation all records relating to the importation of the good. This includes, but is not limited to, records concerning the purchase of, cost of, value of and payment for the good, the purchase of, cost of, value of and payment for all materials used in the production of the good and the production of the good in its exported form.

CBP Verification

The US-BFTA places the burden of substantiating the validity of the claim for preferential tariff treatment on the importer. An importer may make a claim for preferential tariff treatment based on knowledge or information in his/her possession. CBP may verify the validity of the claim and will direct inquiries for verification via a CBP Form 28, Request for Information, to the importer.

The importer will substantiate a claim by submitting a signed declaration containing the information specified on Attachment A. This declaration need not be in a prescribed format and may be submitted electronically.

CBP may request documentation from the importer to establish the validity of the claim. Such documentation may include but is not limited to process descriptions and costs, bills of materials, invoices, and affidavits. The importer shall provide the declaration and all other materials to CBP no later than 30 days from the date of the request.

Determination of a Claim

If CBP determines that the good qualifies for preferential tariff treatment, CBP will notify the importer of the positive determination via a CBP Form 29, Notice of Action Taken. The CBP Form 29 will state that the good qualifies as originating, and will include the HTS number, description of the good and the relevant rule of origin applied to the good.

If the importer fails to submit the requested information, CBP will issue a negative determination via a CBP Form 29, Notice of Action Proposed. The notice shall specify why the goods do not qualify for preferential tariff treatment and that barring the submission of the requested information, the negative determination will become effective 20 days subsequent to the date of the notice. The CBP Form 29, Notice of Action Proposed will cite the applicable statutes and/or regulations and detail the rate

and/or value advance, as appropriate and will be followed by a CBP Form 29, Notice of Action Taken.

If the importer provides a declaration and/or supporting documentation, and CBP determines, based on the information submitted, that the goods do not qualify for preferential tariff treatment, a negative determination will be sent to the importer in the form of a CBP Form 29, Notice of Action Proposed. The notice will specify why the goods do not originate pursuant to the US-BFTA rules of origin, and that barring the submission of the requested information, the negative determination will become effective 20 days subsequent to the date of the notice. The CBP Form 29, Notice of Action Proposed will cite the applicable statutes and/or regulations and detail the rate and/or value advance as appropriate and will be followed by a CBP Form 29, Notice of Action Taken.

Claims for preferential tariff treatment must be supported by a declaration that pertains to a single shipment or a blanket declaration covering shipments for a period of up to 12 months. Where a negative determination is made with respect to a blanket declaration, CBP shall deny preferential tariff treatment to all importations of identical merchandise covered by that blanket declaration for all entries that have not reached final liquidation.

If CBP finds that subsequent to a negative determination an importer submits another false or unsubstantiated preference claim on identical goods, CBP may disallow preferential tariff treatment on identical goods imported by that party until the importer has shown to CBP's satisfaction that the goods qualify for preferential treatment.

Corrected US-BFTA Claims

An importer who becomes aware that a claim for preferential tariff treatment was made in error is required to promptly make a corrected declaration. Penalties may not be assessed if the importer voluntarily and promptly declares that imported goods do not originate by correcting the claim and paying any duty owed.

Petition and Protest Rights

Post-Importation Claims

Importers may make a post-importation to contest a denial of preference claim in accordance with the Post Entry Amendment (PEA) test program. <http://www.cbp.gov/trade/entry-summary/post-entry-amendment> or the post-Summary Correction test program, <http://www.cbp.gov/trade/entry-summary/port-summary-correction>.

Protest Rights

Importers may file a protest to contest a denial of preference or other adverse action by CBP pursuant to 19 U.S.C. 1514 within 180 days of the date of liquidation or other adverse action by CBP.

Merchandise Processing Fees (MPF) and Harbor Maintenance Fees (HMF)

Originating goods under the US-BFTA, in addition to being subject to reduced and free rates of duty are exempt from MPF. Non-originating goods eligible for preferential treatment under a TPL are not eligible for a MPF exemption.

In addition, goods are not exempt from the harbor maintenance fee.

Termination of the Agreement

There is no set expiration date for the US-BFTA. However, the provisions of and amendments made by the Act will cease to be effective upon the termination of the Agreement by written notification from either the U.S. or Bahrain.

Action

Effective August 1, 2006, importers and brokers may file claims for preferential tariff treatment on qualifying goods that originate in Bahrain. These claims shall be made at the time the entry summary is filed by placing on the CBP Form 7501 the SPI "BH" as a prefix to the HTS item number for each line on which preferential tariff treatment is claimed.