

## Oman Free Trade Agreement Implementation Instructions

January 7, 2009

### Background

The U.S.-Oman Free Trade Agreement Implementation Act (“the Act”; Public Law 109-283; 120 Stat. 1191; 19 U.S.C. 3805 note) was signed on September 26, 2006. The Act allowed for the Agreement to take effect on or after January 1, 2007 with the actual implementation date to be determined by the President. Sections 201 and 202 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 Oman provided for under the Agreement. The final text of the Agreement can be found on-line at the [U.S. Trade Representative \(USTR\)](#) website.

Presidential Proclamation 8332, dated December 29, 2008 and published in the Federal Register on December 31, 2008, implemented the U.S.-Oman Free Trade Agreement (UOFTA) for goods entered or withdrawn from warehouse for consumption on or after January 1, 2009. The Proclamation incorporated, by reference, Publication 4050 of the United States International Trade Commission (USITC). Annex I of Publication 4050 of the USITC, amends the Harmonized Tariff Schedule (HTS) by adding a new General Note 31 containing specific information regarding the UOFTA and a new Subchapter XVI to Chapter 99 to provide for temporary tariff rate quotas (TRQs) implemented by the UOFTA. Annex II of Publication 4050 amends the HTS to provide for immediate and staged tariff reductions. Publication 4050 has been posted to the [USITC's](#) website.

The Agreement provides for the immediate or staged elimination of duties and barriers to bilateral trade in goods and services originating in the United States and/or Oman.

This document provides instruction for the filing and acceptance of claims for preferential treatment of goods made under the UOFTA.

Title 19, Code of Federal Regulations (C.F.R.) 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 UOFTA 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 31, containing rules of origin, definitions and other provisions used to determine whether a good originates under the UOFTA.

Generally, under the UOFTA, a good is originating where it is imported directly from Oman, and:

- a. the good is wholly obtained or produced entirely in Oman, the United States or both;
- b. the good, other than that covered by (c) below, is a new or different article of commerce that has been grown, produced, or manufactured in the territory of Oman, the United States or both; and the sum of:

- (i) the value of materials produced in the territory of Oman, the United States or both; plus
- (ii) the direct cost of processing operations performed in the territory of Oman, the United States or both;

is not less than 35 percent of the appraised value of the good at the time it is imported into the United States; or

- c. a textile or apparel good specified in Annex 3-A of the Agreement or agricultural goods specified in Annex 4-A of the Agreement undergo an applicable change in tariff classification specified in General Note 31(h).

For purposes of the UOFTA, 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 Oman, the United States 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 UOFTA contains a “cumulation” provision, which provides that the value of materials produced in the United States or Oman and the direct cost of processing performed in the U.S. or Oman may be counted without limitation toward satisfying the 35 percent direct cost of processing requirement.

### **Direct Shipment / Transit and Transshipment**

In addition to meeting the rules of origin, the UOFTA requires that a good be imported directly from the territory of one Party into a territory of the other Party in order to be considered originating. A good shall not be considered to be imported directly from the territory of the other Party if the good undergoes subsequent production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party.

### **Claims at Entry Summary**

A claim for preferential tariff treatment may be filed on originating goods at the time of entry summary by placing the Special Program Indicator (SPI) “OM” as a prefix to the HTS subheading for each good or line item for which treatment is being claimed.

### **Declaration Requirements**

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 a 12-month time period.

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, as well as all materials used in the production of the good in its exported form.

### **Textiles and Apparel**

Textiles and apparel products may qualify as originating under UOFTA 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 some differences exist, these requirements are similar to those of the NAFTA.

Below is a summary of the processes required for some of the more basic products to be considered eligible for the UOFTA. Depending on the type of product, it may be exempt from these requirements. For more specific information and specific tariff shift rules for the article being imported, refer to General Note 31(h).

- a) Yarn – generally, fiber must originate in Oman or United States in order to qualify for preferential tariff treatment.
- b) Fabric – generally, yarn must originate in Oman or United States to qualify for preferential tariff treatment. Cotton and man-made knit fabric are under fiber forward rules.
- c) Apparel – generally, yarn must originate in Oman or United States 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 TPL’s cover 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 Oman, regardless of the origin of the fabric or yarn used to produce the goods.

This TPL is provided for in Chapter 99, Subchapter XVI, Note 13 and is covered by HTS number 9916.99.20.

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

### **Other Textile and Apparel Goods of Oman**

If a good does not qualify as originating under UOFTA or under the established TPLs, but is nevertheless considered to be a product of Oman, then the normal trade relations rate under column 1 of the HTS 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 31, 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 31, 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 UOFTA provides quantitative restraints associated with a reduced duty rate for agricultural products such as cheese, butter, dairy products, beef, sugar, peanuts, cotton, and tobacco provided for in Chapter 99, Subchapter XVI, U.S. Notes 3 through 12. The agricultural quotas are covered by HTS numbers 9916.0205 - 9916.52.40.

### **Quota (TPL and TRQ)**

For agricultural products subject to a tariff-rate quota, the Special Program Indicator (SPI) "OM" must be placed in front of the Heading 9916 HTS number when the entry is filed. In addition to the 9916 HTS number, the appropriate Chapter 1-97 HTS number must be identified on the CBP form 7501.

The application of tariff rate quotas for the UOFTA 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 [Quota Bulletins](#) 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 USITC Publication 4050.

**CBP Verification**

The UOFTA places the responsibility of substantiating the validity of a 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 possession that the good is originating. When verifying the validity of a claim, CBP will direct inquiries to the importer via a CBP Form 28, Request for Information.

Upon request by CBP, the importer shall provide the declaration and substantiating documentation to establish the validity of the claim. The declaration need not be in a prescribed format; however, it must contain the data elements in attachment A. The substantiating documentation may include but is not limited to a description of the good and the manufacturing operations, the value, origin and originating status of all materials, and the identification of the direct costs of processing. The importer shall provide the declaration and all other supporting documentation to CBP within 30 days of a 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. 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 “Proposed” CBP Form 29. The notice shall specify why the good does not qualify for preferential tariff treatment and allow the importer an additional 20 days to provide the requested information. The proposed CBP Form 29 will cite the applicable statutes and/or regulations and detail the rate and/or value advance, as appropriate.

If the importer fails to submit the information requested in the proposed CBP Form 29 within 20 days of the date of the notice, or provides a declaration and/or supporting documentation, and CBP determines, based on the information submitted, that the good does not qualify for preferential tariff treatment, a negative determination will be sent to the importer in the form of a CBP Form 29 “Action Taken”. The notice will specify why the good does not originate pursuant to the UOFTA rules of origin, cite the applicable statutes and/or regulations and detail the rate and/or value advance, as appropriate.

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. When a negative determination is made with respect to a blanket declaration, CBP shall deny preferential tariff treatment on all importations of identical goods 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 an additional preference claim on identical goods that is found by means of another verification to be unsubstantiated or false, CBP may suspend preferential tariff treatment on identical goods

imported by that party until the importer has shown to CBP's satisfaction that the goods originate.

### **Post-Importation Claims**

If a claim for preference was not made at the time of entry summary, the UOFTA permits the importer to make a post-importation claim for preferential tariff treatment and request a refund of excess duties and/or merchandise processing fee (MPF). The importer may make a post-importation claim no later than one year after the date of importation and must comply with the requirements of 19 U.S.C. 1520(d). The importer shall submit a claim in writing to the port where the good was entered with the following:

- 1) A written statement that the good qualified as an originating good at the time of importation and the number and date of the entry or entries covering the good;
- 2) A copy of a declaration or supporting documentation containing the required data elements in Attachment A demonstrating that the good qualified as originating;
- 3) A statement indicating whether the entry summary or equivalent documentation was provided to any other person;
- 4) A statement indicating whether a protest, petition or request for reliquidation has been filed relating to the good and identification of such filing(s).

If CBP determines that a declaration or other information containing the required data elements is illegible, defective or has not been completed in accordance with the requirements, the importer shall be granted no less than five working days to submit a corrected declaration. Failure to provide a corrected declaration or other information shall result in denial of the post-importation claim.

In addition, CBP shall deny a claim that was not filed timely, or that was based on an invalid declaration, or other information. A claim may be denied following an origin verification if CBP makes a negative determination based on findings discovered during the verification.

### **Correction of UOFTA Claims**

An importer who learns that a claim for preferential tariff treatment was made in error is required to make a corrected declaration and comply with 19 C.F.R. 162.74, Prior Disclosure, requirements.

### **Protest Rights**

An Importer or other interested party may file a protest to contest a negative origin determination pursuant to 19 U.S.C. 1514 within 180 days of the date of liquidation. The protest may enable the importer to receive a refund of duties and/or MPF for eligible goods entered, or withdrawn from warehouse, for consumption.

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

Originating goods under the UOFTA, in addition to being subject to reduced or free rates of duty, are exempt from MPF. Goods eligible for preferential treatment under a TPL are non-originating and thus ineligible for the MPF exemption.

In addition, goods are not exempt from the Harbor Maintenance Fee (HMF) regardless of their originating status.

**Termination of the Agreement**

There is no set expiration date for the UOFTA. 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 United States or Oman.

**Action**

Effective January 1, 2009, importers and brokers may file claims for preferential tariff treatment on goods that originate under the UOFTA. These claims may be made at the time of entry summary by placing the SPI "OM" on the CBP Form 7501 as a prefix to the HTS item number for each line on which preferential treatment is claimed.

The programming updates to the Automated Commercial System (ACS) allowing for automated processing have not yet been completed. Therefore, until further notice, importers claiming preference under the UOFTA should file manual entries or file ABI entries at release with manual entry summaries.