DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 163

[T.D. 00–67]

RIN 1515–AC72

African Growth and Opportunity Act and Generalized System of Preferences

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (the AGOA), apply to sub-Saharan African countries designated by the President and involve: The extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded from GSP duty-free treatment that are not import-sensitive; and the entry of specific textile and apparel articles free of duty and free of any quantitative limits. The regulatory amendments contained in this document reflect and clarify the statutory standards for preferential treatment under the AGOA and also include specific documentary, procedural and other related requirements that must be met in order to obtain that treatment. Finally, this document also includes some interim amendments to the existing Customs Regulations implementing the GSP to conform those regulations to previous amendments to the GSP statute.

DATES: Interim rule effective October 1, 2000; comments must be submitted by December 4, 2000.

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

FOR FURTHER INFORMATION CONTACT:

Operational issues: Cathy Sauceda, Office of Field Operations (202–927–4198).

Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

African Growth and Opportunity Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the ''Act''), Public Law 106–200, 114 Stat. 251. Title I of the Act concerns the extension of certain trade benefits to sub-Saharan Africa and is referred to in the Act as the ''African Growth and Opportunity Act'' (the ''AGOA'').

Subtitle A of Title I of the Act concerns trade policy for sub-Saharan Africa. Subtitle A is codified at 19 U.S.C. 3701–3706 and includes section 104 (19 U.S.C. 3703) which (1) authorizes the President to designate a sub-Saharan African country as an ''eligible'' sub-Saharan African country if the President determines that the country meets specified eligibility requirements and (2) requires that the President terminate a designation if the President determines that an eligible country is not making continual progress in meeting those requirements. Subtitle A also includes section 107 (19 U.S.C. 3706) which, for purposes of Title I, defines the terms ''sub-Saharan Africa'' and ''sub-Saharan African country'' and variations of those terms with reference to 48 listed countries.

Subtitle B of Title I of the Act concerns trade benefits under the AGOA. The provisions within Subtitle B to which this document relates are sections 111, 112 and 113.

Section 111

Subsection (a) of section 111 of the Act amends Title V of the Trade Act of 1974 (the Generalized System of Preferences, or GSP, statute which previously consisted of sections 501–507, codified at 19 U.S.C. 2461–2467) by inserting after section 506 a new section 506A entitled ''Designation of sub-Saharan African countries for certain benefits'' and codified at 19 U.S.C. 2466a.

Subsection (a) of new section 506A authorizes the President, subject to referenced eligibility requirements and criteria, to designate a country listed in section 107 of the Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b). This subsection (a) also requires that the President terminate a designation if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements for designation.

Subsection (b) of new section 506A concerns preferential tariff treatment for certain articles and consists of the following two paragraphs:

1. Paragraph (1) authorizes the President to provide duty-free treatment for any article described in section 503(b)(1) (B) through (G) of the GSP statute that is the growth, product, or manufacture of a beneficiary sub-Saharan African country. A beneficiary sub-Saharan African country is a country listed in section 107 of the Act that has been designated by the President as eligible under subsection (a) of new section 506A. The President is authorized to provide duty-free treatment for an article if, after receiving the advice of the International Trade Commission in accordance with section 503(e) of the GSP statute, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. The articles described in section 503(b)(1) (B) through (G) of the GSP statute are those that are normally excluded from duty-free treatment under the GSP and consist of the following:

a. Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

b. Import-sensitive electronic articles;

c. Import-sensitive steel articles;

d. Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

e. Import-sensitive semimanufactured and manufactured glass products; and

f. Any other articles which the President determines to be import-sensitive in the context of the GSP.

2. Paragraph (2) provides that the duty-free treatment under paragraph (1) will apply to any article described in that paragraph that meets the requirements of section 503(a)(2) (that is, the basic GSP origin and related rules). Paragraph (2) also makes application of those basic rules in this context subject to the following two additional rules:

a. If the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to that United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and

b. The cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries shall be applied in determining that percentage.

Thus, in order for an article described in paragraph (1) to receive duty-free treatment, that article must meet the basic origin and related rules that apply to all eligible articles from any GSP-eligible country, but subject to two additional rules. In other words, (1) the article must have become the growth, product, or manufacture of a beneficiary sub-Saharan African country by some process other than a simple combining or packaging operation or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article, (2) the article must be imported directly from a beneficiary sub-Saharan African country into the customs territory of the United States, (3) the article must have at least 35 percent of its appraised value attributed to the sum of the direct costs of processing operations performed in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries that are members of the same association of countries and are treated as one country under section 507(2) of the GSP statute, plus the cost or value of the materials produced in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries, and (4) as variations from the general GSP 35 percent value-content rule (the two additional rules): the cumulation of the cost or value of materials from different beneficiary countries is not dependent on those beneficiaries being members of an association of countries; and the cost or value of materials produced in the customs territory of the United States (the 50 States and the District of Columbia and Puerto Rico) may be counted toward the 35 percent requirement to a maximum of 15 percent of the article's appraised value.

Subsection (c) of new section 506A defines the terms ''beneficiary sub-Saharan African country'' and ''beneficiary sub-Saharan African countries'' for purposes of the AGOA as a country or countries listed in section 107 of the Act that the President has determined is eligible under subsection (a) of new section 506A.

Subsection (b) of section 111 of the Act revises section 503(c)(2)(D) of the GSP statute in order to accommodate inclusion of a reference to ''any beneficiary sub-Saharan African country.'' The effect of this amendment is to preclude the withdrawal of GSP duty-free treatment from a beneficiary sub-Saharan African country by application of the GSP competitive need limitation provisions. This amendment is not addressed in the regulatory changes set forth in this document.

It is noted that section 114 of the Act also amends the GSP statute by inserting after new section 506A another new section 506B (codified at 19 U.S.C. 2466b and entitled ''Termination of benefits for sub-Saharan African countries'') which provides for continuation of GSP duty-free treatment through September 30, 2008, in the case of a beneficiary sub-Saharan African country as defined in section 506A(c).

Section 112

Section 112 of the Act sets forth new rules that provide for the preferential treatment of certain textile and apparel products. These rules are codified at 19 U.S.C. 3721 and thus are outside the GSP statutory framework. Moreover, these rules in effect operate as an exception to the approach under the GSP because section 503(b)(1)(A) of the GSP statute excludes most textile and apparel articles from preferential (that is, duty-free) treatment under the GSP.

Subsection (a) of section 112 contains the basic preferential treatment statement. It provides that textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the GSP statute shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113 of the Act.

Subsection (b) of section 112 lists the specific textile and apparel products to which the preferential treatment described in subsection (a) applies. These products are as follows:

1. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States (HTSUS) and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (b)(1)(A)];

2. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes [paragraph (b)(1)(B)];

3. Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States) if those articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States [paragraph (b)(2)];

4. Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary sub-Saharan African countries), subject to rules or conditions involving (1) application of quantitative limits on preferential treatment (in effect, tariff rate quotas) for each of eight 1-year periods beginning on October 1, 2000, with a percentage increase in each year, (2) subject to those tariff rate quota provisions and until September 30, 2004, application of preferential treatment to apparel articles wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric used to make the articles, and (3) application of an import surge safeguard mechanism that could lead to suspension by the President of duty-free treatment for an article if increased imports of that article cause serious damage, or the threat of serious damage, to a domestic industry producing a like or directly competitive article [paragraph (b)(3)];

5. Cashmere sweaters, that is, sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary

sub-Saharan African countries and classifiable under subheading 6110.10 of the HTSUS [paragraph (b)(4)(A)];

6. Wool sweaters containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries [paragraph (b)(4)(B)];

7. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the North American Free Trade Agreement (NAFTA). (This AGOA provision in effect applies to apparel articles which are originating goods, and thus are entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The subject fabrics and yarns include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts—see House Report 106–606, 106th Congress, 2d Session, at page 77.) [paragraph (b)(5)(A)];

8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country and that is not described in paragraph (b)(5)(A), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (b)(5)(A) [paragraph (b)(5)(B)]; and

9. A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of the beneficiary country or countries, subject to a determination by the President regarding which, if any, particular textile and apparel goods of the country or countries will be treated as being handloomed, handmade, or folklore articles [paragraph (b)(6)].

Subsection (c) of section 112 concerns the elimination of existing quotas on textile and apparel articles imported into the United States from Kenya and Mauritius. This provision is not addressed in the regulatory changes set forth in this document.

Subsection (d) of section 112 sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under section 112. These special rules are as follows:

1. Paragraph (d)(1)(A) sets forth a general rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if the value of those foreign findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and used in the production of brassieres), zippers (including zipper tapes), and labels. However, as an exception to the paragraph (d)(1)(A) general rule, paragraph (d)(1)(C) provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (b)(2) of section 112 (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of ''foreign'' origin).

2. Paragraph (d)(1)(B) sets forth a general rule regarding the treatment of specific interlinings, that is, a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. The paragraph also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Finally, paragraph (d)(2) sets forth a *de minimis* rule which provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

Subsection (e) of section 112 defines certain terms for purposes of sections 112 and 113 of the Act and, in paragraph (e)(2), states that the terms ''beneficiary sub-Saharan African country'' and ''beneficiary sub-Saharan African countries'' have the same meaning as those terms have under new section 506A(c) discussed above.

Finally, subsection (f) of section 112 provides that section 112 takes effect on October 1, 2000, and will remain in effect through September 30, 2008.

Section 113

Section 113 of the Act sets forth standards and conditions for the designation of beneficiary sub-Saharan African countries and for the granting of preferential treatment to textile and apparel articles under section 112. These provisions are primarily intended to avoid transshipment situations and thus ensure that preferential treatment is applied to goods as intended by Congress.

Subsection (a) of section 113 sets forth various terms and conditions that a potential beneficiary sub-Saharan African country must meet for purposes of preferential treatment under section 112. These terms and conditions involve enforcement and related actions to be taken by, and within, those potential beneficiary sub-Saharan African countries and thus, except in the case of paragraphs (a)(1)(F) and (a)(2), do not relate to matters that require regulatory action in this document. Paragraph (a)(1)(F) requires a country to agree to report, on a timely basis, at the request of the U.S. Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system. For purposes of paragraph (a)(1)(F), paragraph (a)(2) states that documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

Subsection (b) of section 113 sets forth regulatory standards for purposes

of preferential treatment under section 112, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each beneficiary sub-Saharan African country, prescribes a penalty that the President must impose on an exporter if the President determines that the exporter has engaged in transshipment, specifies when ''transshipment'' occurs for purposes of the subsection, and sets forth responsibilities of Customs regarding monitoring and reporting to Congress on actions taken by countries in sub-Saharan Africa. The specific provisions under subsection (b) that require regulatory treatment in this document are the following:

1. Paragraph (b)(1)(A) provides that any importer that claims preferential treatment under section 112 must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (b)(1)(A) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (b)(2) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (b)(1)(A) will not be required in the case of an article imported under section 112 if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Finally, subsection (c) of section 113 requires Customs to provide technical assistance to the beneficiary sub-Saharan African countries and to send production verification teams to at least four beneficiary sub-Saharan African countries each year, and subsection (d) of section 113 contains an appropriation authorization to carry out these duties. These provisions are not addressed in the regulatory changes set forth in this document.

Other Changes to the GSP Program

Section 226 of the Customs and Trade Act of 1990 (Pub. L. 101–382, 104 Stat. 660) amended section 503 of the GSP statute (19 U.S.C. 2463) in order to include explicit country of origin language in the statutory text. The amendments involved (1) inclusion of a reference to an eligible article which is ''the growth, product, or manufacture'' of a beneficiary developing country, (2) inclusion of a requirement that the implementing regulations promulgated by the Secretary of the Treasury provide that, in order to be eligible for duty-free treatment, an article must be ''wholly the growth, product, or manufacture of a beneficiary developing country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country,'' and (3) inclusion of a limitation on the conferring of origin for purposes of duty-free treatment in the case of simple combining or packaging operations or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article. The Customs Regulations implementing the GSP were originally published in 1975 and were never amended to reflect the 1990 statutory amendments. This document therefore sets forth conforming regulatory amendments for this purpose.

In addition, in Proclamation 6942 of October 17, 1996 (published in the **Federal Register** at 61 FR 54719 on October 21, 1996), President Clinton amended the GSP in a number of respects. One of those changes involved the termination of the designation of Malaysia both as a beneficiary developing country for purposes of the GSP and as a member of the Association of South East Asian Nations for purposes of the GSP. Section 10.175 of the Customs Regulations (19 CFR 10.175) sets forth standards for the GSP direct importation requirement and, in paragraph (e)(1), permits shipment, with some restrictions, from a member of an association designated for GSP purposes through a former beneficiary developing country whose designation as a member of that same association for GSP purposes was terminated by the President; paragraph (e)(2) of that section lists three former beneficiary developing countries whose designation was terminated as described in paragraph (e)(1). This document adds Malaysia to that paragraph (e)(2) list.

Finally, Customs notes that §§ 10.171(a), 10.175(e), and 10.176(c) of the Customs Regulations contain out-of-date references to various GSP statutory provisions. This document conforms those references to the current GSP statute.

Section-by-Section Discussion of Interim Amendments

Section 10.171

The amendment of this section involves an amendment of the first sentence of paragraph (a) to reflect the correct codification of the GSP statute.

Section 10.175

The amendments of this section involve (1) corrections to various GSP statutory citations in paragraphs (e)(1) and (e)(2), and (2) the addition of Malaysia to the list of countries in paragraph (e)(2) to reflect the action taken by the President in Proclamation 6942 as discussed above.

Section 10.176

The amendments to this section include the revision of paragraph (a) to reflect the changes to the GSP statute previously made by section 226 of the Customs and Trade Act of 1990 as discussed above. It is noted that the amended GSP statutory text regarding the basic rules of origin closely follows the wording of the corresponding Caribbean Basin Initiative (CBI) statutory text (section 213(a)(1) and (2) of the Caribbean Basin Economic Recovery Act (CBERA), codified at 19 U.S.C. 2703(a)(1) and (2)), and the legislative history relating to section 226 clearly indicates that the CBI statute was the model for this change to the GSP statute (see House Report 101–650, 101st Congress, 2d Session, at page 137). Accordingly, revised paragraph (a) of § 10.176 as set forth in this document follows the corresponding CBI regulatory provision (§ 10.195(a) of the Customs Regulations, 19 CFR 10.195(a)) but with appropriate textual variations to reflect a GSP context. It should also be noted that in the revised GSP text (1) reference is no longer made to merchandise which is the ''assembly'' of a beneficiary developing country because, similar to the CBI, that term is not used in the statute and in any event is covered by the phrase ''growth, product, or manufacture,'' and (2) the reference to the ''imported directly'' requirement has not been retained because that requirement is already separately and adequately addressed in § 10.175 (this does not modify the GSP imported directly requirement).

In addition, paragraph (c) of this section is amended to correct an out-of-date reference to a provision within the GSP statute.

New § 10.178a

This section is intended to cover the preferential tariff treatment provisions of subsection (b) of new section 506A of the GSP statute.

Paragraphs (a) and (b) of the regulatory text reflect the terms of section 506A(b)(1). Paragraph (a) sets the statutory context for the section and paragraph (b) describes the designation authority of the President and lists the articles that may be designated for duty-free treatment.

Paragraph (c) specifies the manner in which a claim for duty-free treatment under the section should be made. It follows the procedure specified in § 10.172 of the GSP regulations but provides for use of the symbol ''D'' (rather than ''A'') as the special program indicator on the entry.

Paragraph (d) of the regulatory text reflects the rules of origin principles contained in section 506A(b)(2). In order to avoid unnecessary duplication of regulatory text, and in consideration of the fact that the statute provides for application of the GSP origin and related rules in this context (subject to two exceptions in the case of the 35 percent value content requirement), paragraph (d) provides for application of the relevant existing GSP regulatory provisions (that is, §§ 10.171, 10.173, and 10.175 through 10.178) but with certain specified exceptions or variations to conform to the AGOA context.

New §§ 10.211 Through 10.217

These new sections are intended to implement those textile and apparel preferential treatment provisions within sections 112 and 113 of the Act that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations.

Section 10.211 outlines the statutory context for the new sections and is self-explanatory.

Section 10.212 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of ''apparel articles,'' by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of ''assembled in one or more beneficiary countries'' is based in part on the definition of ''wholly assembled'' in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)) but also adds a reference to thread as a material that is not considered to be a component for purposes of the definition. In addition, the definition is intended to allow a prior partial assembly in the United States, consistent with the overall structure of the AGOA as reflected in the types of operations allowed under the program.

3. The definition of ''cut in one or more beneficiary countries'' precludes any cutting operation performed in a country other than a beneficiary country in accordance with the clear language of the statute.

4. The definition of ''knit-to-shape'' follows the definition in § 102.21(b)(3) of the Customs Regulations (19 CFR 102.21(b)(3)).

5. The definition of ''major parts'' is taken from the definition in § 102.21(b)(4) of the Customs Regulations (19 CFR 102.21(b)(4)).

6. The definition of ''NAFTA'' reflects the definition contained in section 112(e)(3) of the Act.

7. The definition of ''originating'' refers to the Customs Regulations that implement section 334 of the Uruguay Round Agreements Act and therefore is consistent with the intent of Congress (see House Report 106–606, 106th Congress, 2d Session, at page 77).

8. The definition of ''wholly assembled in'' is intended to ensure, consistent with the wording of the statute and the clear meaning of ''wholly'' in this context, that all assembly operations (including any initial partial assembly or any tail-end assembly operation) will be performed in the countries that are the intended beneficiaries of the AGOA program.

9. The definition of ''wholly formed'' relies in part on the definition of ''fabric-making process'' in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)) and also uses a similar approach for yarns and thread because the Act uses these terms with reference to fabrics, yarns, and thread. The definition is intended to ensure that all processes essential for yarn or thread or fabric formation are performed in the United States or beneficiary countries.

Section 10.213 identifies the specific articles to which preferential treatment applies under section 112 of the Act. Paragraph (a) repeats the ''imported directly'' requirement of section 112(a) of the Act and identifies the various types of articles described within sections 112(b)(1)–(6) of the Act. Paragraph (b) covers the special rules for findings, trimmings, and interlinings and the *de minimis* rule contained in section 112(d) of the Act. Paragraph (c) explains what is meant by ''imported directly.'' The following specific points are noted regarding these regulatory texts:

1. With regard to paragraph (a)(2), which corresponds to section 112(b)(1)(B) of the Act, Customs notes that the statutory provision does not address the issue of whether the embroidery or stone-washing and other processes mentioned in that provision (which are principally finishing operations normally done after assembly) must be done in beneficiary countries. The relevant legislative history does not address the issue. The statute could be read to allow these processes to be done in a non-beneficiary country provided that, after these processes are completed, the article is returned to a beneficiary country for direct importation into the United States. However, Customs believes that this interpretation would lead to a result that is contrary to the Congressional statement of policy set forth in section 103 of the Act which mentions, among other things, the encouragement of increased trade and investment between the United States and sub-Saharan Africa and the strengthening and expansion of the private sector in sub-Saharan Africa, because it could have the effect of diverting those finishing operations to third countries and thus away from the intended beneficiaries under the Act. Customs has determined that limiting the performance of those processes to beneficiary countries would further the stated policy of Congress and would be more consistent with the intent of the Act. Accordingly, in paragraph (a)(2) of the regulatory text, the words ''in a beneficiary country'' have been added at the end after ''processes.''

2. In paragraph (a)(3), which corresponds to section 112(b)(2) of the Act, no comma has been included before the parenthetical expression and a comma has been added after that parenthetical expression, in order to correct an apparent inadvertent drafting or printing error and thus ensure proper grammatical sense (this makes the regulatory text consistent with a corresponding statutory text set forth under section 211 of the Act, which is not the subject of this document).

3. In paragraph (a)(7), which corresponds to section 112(b)(4)(B) of the Act, no mention is made of

''merino'' wool because, notwithstanding the use of this word in the heading of the statutory provision, Customs interprets the statutory language as reflecting the intent of Congress to set a maximum (18.5 micron) diameter limitation without regard to the type of animal from which the wool was obtained.

4. In paragraph (a)(9), which corresponds to section 112(b)(5)(B) of the Act, no reference has been made at the end to treatment provided ''for yarns or fabrics'' because treatment in this context must be read in the context of section 112(b)(5)(A) of the Act and therefore can only have reference to articles made from yarns or fabric.

5. Paragraph (b) is divided into two parts: Paragraph (b)(1) reflects the basic rules of section 112(d) of the Act and paragraph (b)(2) is intended to clarify the relationship between findings and trimmings on the one hand and fibers and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under section 112(d). As regards paragraph (b)(2), Customs believes that some clarification is appropriate in this context because sometimes a fiber or yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign fibers or yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (b)(2) a foreign yarn, for example, that is used in an article as a trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation. In addition, the following is noted regarding the paragraph (b) texts:

a. In paragraph (b)(1)(i) the words ''and zippers, including zipper tapes and labels'' in section 112(d)(1)(A) of the Act have been replaced with the words ''zippers (including zipper tapes), labels'' because there is no such thing as a ''zipper label'' and to ensure proper treatment of labels as findings and trimmings in their own right. Customs believes that this wording of the regulatory text is consistent with the intent of Congress as reflected in the explanation of the provision in the relevant legislative history (see House Report 106–606, 106th Congress, 2d Session, at page 79); and

b. A separate paragraph (b)(1)(iii) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words ''(and any findings and trimmings)'' in section 112(d)(1)(B)(i) of the Act.

6. The explanation of ''imported directly'' in paragraph (c) is consistent with current regulatory practice. The text follows that used in the Caribbean Basin Initiative (CBI) implementing regulations (see 19 CFR 10.193) rather than the text used in the corresponding GSP regulation (19 CFR 10.175) because the CBI text allows for contributions from multiple beneficiary countries without affecting compliance with the imported directly requirement and thus is more appropriate for the production scenarios permitted under section 112(b) of the Act.

Section 10.214 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in section 113(b)(1)(A) of the Act. Paragraph (a) contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific articles described in section 112(b) of the Act and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA which involves different country of origin standards for preferential duty treatment. Paragraph (c) sets forth instructions for preparation of the Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the AGOA program.

Section 10.215 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in section 113(b)(1)(A) of the Act for procedures ''similar in all material respects to the requirements of Article 502(1) of the NAFTA,'' this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context. However, contrary to the NAFTA regulatory text, paragraph (a) of § 10.215 does not allow for a declaration based on a copy of an original Certificate of Origin.

Section 10.216 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to ''the provisions of part 163'' which sets forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. The effect is the same as that under the NAFTA § 181.22 text.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for AGOA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of section 113(b)(2) of the Act, this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Finally, section 10.217 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)) and in the CBI regulations (19 CFR 10.198(c)), the text expands on the GSP/CBI approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the Customs Regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production in a beneficiary country that Customs may need to review for purposes of verifying a claim for preferential treatment. This paragraph is based on the specifics regarding country of origin documentation contained in section 113(a)(2) of the Act.

3. Finally, paragraph (a)(3) refers to evidence in a beneficiary country to document the use of U.S. materials in an article produced in the beneficiary country, because the presence of U.S. materials is a key element for many of the articles to which preferential treatment applies under the AGOA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained by the beneficiary country producer not only with regard to the production process but also with regard to the source of the materials used in that production.

Appendix to Part 163

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim ''(a)(1)(A) list'') a reference to the Certificate of Origin and supporting documentation prescribed under new § 10.216.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

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

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

Executive Order 12866

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

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved 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 1515–0224.

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

The collection of information in these interim regulations is in §§ 10.214, 10.215, and 10.216. This information conforms to requirements in 19 U.S.C. 3722(b)(1)(A) and is used by Customs to determine whether textile and apparel articles imported from designated beneficiary sub-Saharan African countries are entitled to duty-free entry under the African Growth and Opportunity Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated annual reporting and/or recordkeeping burden: 10,400 hours.

Estimated average annual burden per respondent/recordkeeper: 23 hours.

Estimated number of respondents and/or recordkeepers: 440.

Estimated annual frequency of responses: On occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

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

List of Subjects

19 CFR Part 10

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

19 CFR Part 163

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

Amendments to the Regulations

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

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

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.171 through 10.178 is revised to read, and a new specific authority citation for §§ 10.211 through 10.217 is added to read, as follows:

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

Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 *et seq.*;

* * * * *

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

* * * * *

2. In § 10.171, the first sentence of paragraph (a) is amended by removing the reference ''(19 U.S.C. 2461–2465)'' and adding, in its place, the reference ''(19 U.S.C. 2461–2467)'.

3. In § 10.175:

a. Paragraph (e)(1) is amended by removing the words ''section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3))'' and adding, in their place, the words ''section 507(2), Trade Act of 1974, as amended (19 U.S.C. 2467(2))'' and by removing the words ''section 504, Trade Act of 1974, as amended (19 U.S.C. 2464)'' and adding, in their place, the words ''section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d))'; and

b. Paragraph (e)(2) is amended by removing the words ''section 504 of the Trade Act of 1974 (19 U.S.C. 2464)'' and adding, in their place, the words ''section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d))'' and by adding ''Malaysia'' in appropriate alphabetical order in the list of countries at the end of the paragraph.

4. In § 10.176, paragraph (a) is revised, and paragraph (c) is amended by removing the words ''section 502(a)(3) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(3))'' and adding, in their place, the words ''section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2))''. The revision of paragraph (a) reads as follows:

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries*—(1) *General.* Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph. For purposes of this section:

(i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering, *etc.;*

(C) Blending foreign and beneficiary developing country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength;

(ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and

(iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

* * * * *

5. A new § 10.178a is added to read as follows:

§ 10.178a Special duty-free treatment for sub-Saharan African countries.

(a) *General.* Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) *Eligible articles.* The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section:

(1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(2) Certain electronic articles;

(3) Certain steel articles;

(4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

(5) Certain semimanufactured and manufactured glass products; and

(6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

(c) *Claim for duty-free treatment.* A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol ''D'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) *Origin and related rules.* The provisions of §§ 10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules:

(1) The term ''beneficiary developing country,'' wherever it appears, means ''beneficiary sub-Saharan African country;''

(2) In the GSP declaration set forth in § 10.173(a)(1)(i), the column heading ''Materials produced in a beneficiary developing country or members of the same association'' should read ''Material produced in a beneficiary sub-Saharan African country or in the U.S.;''

(3) The provisions of § 10.175(c) will not apply; and

(4) For purposes of determining compliance with the 35 percent value content requirement set forth in § 10.176(a):

(i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of § 10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(e) *Importer requirements.* In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;

(2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in § 10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose;

(3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section;

(4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.175(d)(1) through (3) were met;

(5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in § 10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose; and

(6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

6. Part 10 is amended by adding a new center heading followed by new §§ 10.211 through 10.217 to read as follows:

Textile and Apparel Articles Under the African Growth and Opportunity Act

Sec.

10.211 Applicability.
10.212 Definitions.
10.213 Articles eligible for preferential treatment.
10.214 Certificate of Origin.
10.215 Filing of claim for preferential treatment.
10.216 Maintenance of records and submission of Certificate by importer.
10.217 Verification and justification of claim for preferential treatment.

Textile and Apparel Articles Under the African Growth and Opportunity Act

§ 10.211 Applicability.

Title I of Public Law 106–200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211–10.217 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to section 112.

§ 10.212 Definitions.

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more beneficiary countries. ''Assembled in one or more beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components (other than thread, decorative embellishments, buttons, zippers, or similar components) that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

Beneficiary country. ''Beneficiary country'' means a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) which has been the subject of a finding by the President, published in the **Federal Register**, that the country has satisfied the requirements of section 113 of the African Growth and Opportunity Act (19 U.S.C. 3722) and which the President has designated as a

beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a).

Cut in one or more beneficiary countries. ''Cut in one or more beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries.

Foreign. ''Foreign'' means of a country other than the United States or a beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term ''knit-to-shape'' applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Major parts. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Originating. ''Originating'' means having the country of origin determined by application of the provisions of § 102.21 of this chapter.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations as provided in 19 U.S.C. 3721.

Wholly assembled in. When used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, the expression ''wholly assembled in'' means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries.

Wholly formed. ''Wholly formed,'' when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

§ 10.213 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles cut in one or more beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more beneficiary countries with thread formed in the United States;

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarn originating either in the United States or one or more beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary countries);

(5) Apparel articles wholly assembled in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric used to make the articles;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.10 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the NAFTA;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country and that is not described in paragraph (a)(8) of this section, to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the preferential treatment provided under paragraph (a)(8) of this section; and

(10) A handloomed, handmade, or folklore article of a beneficiary country or countries that is certified as a handloomed, handmade, or folklore article by the competent authority of the beneficiary country or countries, provided that the President has determined that the article in question will be treated as being a handloomed, handmade, or folklore article.

(b) *Special rules for certain component materials*—(1) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks

and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

(2) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1) of this section.

(c) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;

(2) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.214 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared by the exporter in the beneficiary country in the form specified in paragraph (b) of this section. Where the beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 4820–02–P

African Growth and Opportunity Act
Textile Certificate of Origin

<table>
<tr><td colspan="2">1. Exporter Name & Address</td><td>2. Producer Name & Address</td></tr>
<tr><td colspan="2">3. Importer Name & Address</td><td>6. U.S./ African Fabric Producer Name & Address</td></tr>
<tr><td>4. Description of Article</td><td>5. Preference Group</td><td>7. U.S./ African Yarn Producer Name & Address</td></tr>
<tr><td rowspan="2"></td><td rowspan="2"></td><td>8. U.S. Thread Producer Name & Address</td></tr>
<tr><td>9.Name of Handloomed, Handmade or Folklore Article</td></tr>
<tr><td colspan="3">10. Name of Preference Group H Fabric or Yarn:</td></tr>
</table>

Preference Groups:
A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(1)].
B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(2)].
C: Apparel cut and assembled from U.S. fabric from U.S. yarn and thread [19 CFR 10.213(a)(3)].
D: Apparel assembled from regional fabric from yarn originating in the U.S. or one or more beneficiary countries [19 CFR 10.213(a)(4)].
E: Apparel assembled in one or more lesser developed beneficiary countries [19 CFR 10.213(a)(5)].
F: Sweaters knit to shape in chief weight of cashmere [19 CFR 10.213(a)(6)].
G: Sweaters knit to shape with 50 percent or more by weight of fine wool [19 CFR 10.213(a)(7)].
H: Apparel cut and assembled in one or more beneficiary countries from fabrics or yarn not formed in the United States or a beneficiary country (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.213(a)(8) or (a)(9)].
I: Handloomed, handmade or folklore articles [19 CFR 10.213(a)(10)].

I certify that the information on this document is complete 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 this certificate.

<table>
<tr><td colspan="2">12.Authorized Signature</td><td>13. Company</td></tr>
<tr><td colspan="2">14. Name (Print or Type)</td><td>15. Title</td></tr>
<tr><td>16a.Date(DD/MM/YY)</td><td>16b.Blanket Period
From: To:</td><td>17. Telephone Number
Facsimile Number</td></tr>
</table>

BILLING CODE 4820–02–C

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate

it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10, which should be completed only when preference group ''H'' is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a beneficiary country or that is not available in commercial quantities in the United States;

(13) Block 16a should reflect the date on which the Certificate was completed and signed;

(14) Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.216(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 16a). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.215 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. In the case of an article described in § 10.213(a)(1), the written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''D'' as a prefix to the subheading within Chapter 98 of the HTSUS under which the article is classified, and, in the case of any article described in § 10.213(a)(2) through (a)(10), the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.216 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.215 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article 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

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.214(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.214 through 10.216, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.217 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.216, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.215, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.213(a). If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.214(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.213(c)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

PART 163—RECORDKEEPING

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

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

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

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

* * * * *

§ 10.216 AGOA Textile Certificate of Origin and supporting records

* * * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: September 29, 2000.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–25518 Filed 10–2–00; 8:45 am]

BILLING CODE 4820–02–P