

*What Every Member of the
Trade Community Should Know About:*

African Growth Opportunity Act



AN INFORMED COMPLIANCE PUBLICATION

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U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the Commercial Rulings Division, ORR, is s intended to provide general information to the public on the trade benefits available under the African Growth and Opportunity Act which are administered by CBP. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

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Office of Regulations and Rulings

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INTRODUCTION

On May 18, 2000, Public Law 106-200, the Trade and Development Act of 2000 (the “Act”), was signed into law. Title I of the Act, which is entitled “African Growth and Opportunity Act” (the “AGOA”), extends certain trade benefits to sub-Saharan Africa. This informed compliance publication covers the trade benefits administered by the Bureau of Customs and Border Protection (CBP) which are contained in Title I of the Act. A separate informed compliance publication covers Title II, the “United States-Caribbean Basin Trade Partnership Act” (the “CBTPA”).

Subtitle A of Title I is codified at 19 U.S.C. 3701-3706 and;

- 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
- requires the President to terminate a designation if the President determines that an eligible country is not making continual progress in meeting those requirements.

On August 6, 2002, the President signed into law the Trade Act of 2002, Public Law 107-210. Section 3108 of the Trade Act of 2002 contained amendments to the AGOA to modify the treatment accorded to certain textile and apparel articles imported from beneficiary AGOA countries. Presidential Proclamation 7626, dated November 13, 2002, implemented these amendments by modifying the HTSUS.

This publication does not cover the procedures for being designated an eligible beneficiary sub-Saharan African country. That information is available in “*The African Growth and Opportunity Act Implementation Guide*” (October 2000) that was prepared by the United States Trade Representative (co-sponsored by the United States Agency for International Development) which may be downloaded from the Internet at <https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa>. It is available in English and French. Additional information concerning the textile and apparel portions of the law, including copies of the law and Proclamations, is available for downloading from the Department of Commerce, International Trade Administration, Office of Textiles and Apparel web site <http://otexa.ita.doc.gov/> Information on the General System of Preferences (GSP) program and downloadable guides are available at <http://www.ustr.gov/gsp/general.html>.

A list of the implementing Proclamations, designations by the U.S. Trade Representative (USTR), notices issued by the Committee for the Implementation of Textile Agreements (CITA), and customs regulations, and their *Federal Register* publication dates and pages appears near the end of this publication.

List of Sub-Saharan African Countries

The following countries (or any successor political entities) are included in the Act as “sub-Saharan African” countries and are referred to as “listed countries” in this publication. The list below indicates which countries have been designated as “eligible beneficiary countries,” and which are considered as “lesser developed beneficiary” countries under AGOA or “least developed beneficiary developing” countries under GSP.

AGOA eligibility **does not** automatically imply eligibility under the textile and apparel provisions, which require implementation of an effective visa system and an enforcement mechanism to prevent illegal transshipment. All the countries shown in **bold** type below have been designated as eligible for AGOA benefits. For a listing of those countries eligible for the textile and apparel provisions of AGOA as of June 23, 2003, please see the section discussing **Textile and Apparel Products**. (Check the *Federal Register* for more recent designations):

Republic of Angola ¹	Republic of Liberia
Republic of Benin ¹	Republic of Madagascar ¹
Republic of Botswana	Republic of Malawi ¹
Burkina Faso ¹	Republic of Mali ¹
Republic of Burundi ¹	Islamic Republic of Mauritania ¹
Republic of Cameroon	Republic of Mauritius
Republic of Cape Verde ¹	Republic of Mozambique ¹
Central African Republic ¹	Republic of Namibia
Republic of Chad ¹	Republic of Niger ¹
Federal Islamic Republic of the Comoros ¹	Federal Republic of Nigeria
Democratic Republic of Congo ^{*1}	Republic of Rwanda ¹
Republic of the Congo	Democratic Republic of São Tomé and Príncipe ¹
Republic of Cote d'Ivoire	Republic of Senegal
Republic of Djibouti ¹	Republic of Seychelles
Republic of Equatorial Guinea ¹	Republic of Sierra Leone ¹
Republic of Eritrea ^{1,2}	I. Somalia
Ethiopia ¹	Republic of South Africa
Gabonese Republic	Republic of Sudan
Republic of the Gambia ¹	Kingdom of Swaziland
Republic of Ghana	United Republic of Tanzania ¹
Republic of Guinea ¹	Republic of Togo ¹
Republic of Guinea-Bissau ¹	Republic of Uganda ¹
Republic of Kenya	Republic of Zambia ¹
Republic of Lesotho ¹	Republic of Zimbabwe

Eligibility: With the exception of Liberia and Somalia, all the countries on the list are eligible for GSP.

* Effective date to be decided by USTR

¹ Considered “Least-Developed Beneficiary Developing Countries” under GSP

² Designated as a “beneficiary developing country” under GSP by Proclamation 7350 of October 2, 2000

Subtitle B of Title I of the Act concerns trade benefits under the AGOA, and is discussed below.

GENERAL SYSTEM OF PREFERENCES (GSP)

The Act amends Title V of the Trade Act of 1974 (the Generalized System of Preferences, or “GSP,” statute codified at 19 U.S.C. 2461-2467) by inserting a new section 506A (codified at 19 U.S.C. 2466a) entitled “DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.”

The new provision authorizes the President, subject to certain eligibility requirements and criteria, to designate a listed country as a beneficiary sub-Saharan African country eligible for the preferential tariff treatment benefits listed below. The President is required to terminate a designation if he determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements for designation.

What articles are covered?

The President is authorized 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 if, after receiving the advice of the International Trade Commission, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. The articles described are those that are normally excluded from duty-free treatment under the GSP and consist of the following:

- 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;
- Import-sensitive electronic articles;
- Import-sensitive steel articles;
- 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;
- Import-sensitive semi-manufactured and manufactured glass products; and

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

The list of GSP eligible products under AGOA is available for downloading and may be found at <http://www.agoa.gov/>

What are the rules?

Duty-free treatment will apply to any designated article listed above that meets the requirements of the basic GSP origin and related rules and two additional rules:

- 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,
- the article must be imported directly from a beneficiary sub-Saharan African country into the customs territory of the United States,
- 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
- as variations from the general GSP 35 percent value-content rule [these are the two additional rules mentioned above]:
 - 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.

The Act amends the GSP statute by providing for continuation of GSP duty-free treatment through September 30, 2008, in the case of a beneficiary sub-Saharan African country.

Procedures and Recordkeeping

The implementing regulations specify the manner in which a claim for duty-free treatment should be made. The procedures specified in the GSP regulations are followed but the symbol “D” (rather than “A”) is used as the special program indicator on the customs entry documentation.

An importer claiming duty-free treatment must have and maintain (for a period of 5 years from the date of entry) the following records:

- Records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;
- Records that demonstrate that the article qualifies for duty-free treatment because it is the growth, product or 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 requirements. A properly completed GSP declaration in the prescribed format is one example of a record that would serve this purpose;
- 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 the regulations were met;
- 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 19 CFR §10.176(a) and 19 CFR §10.178a(c). A properly completed GSP declaration in the form set forth in 19 CFR §10.173(a)(1) is one example of a record that would serve this purpose.

The importer must establish and implement internal controls that provide for the periodic review of the accuracy of the declarations or other records which establish that an article is the growth, product or manufacture of a beneficiary sub-Saharan African country. The importer must be prepared to produce the required records within 30 days

of a request from CBP and must be prepared to explain how those records and the internal controls referred to above justify the importer's claim for duty-free treatment.

TEXTILE AND APPAREL PRODUCTS

Section 112 of the Act (codified at 19 U.S.C. 3721 and thus outside the GSP statutory framework) sets forth rules that provide for the preferential treatment of certain textile and apparel products. Moreover, these rules in effect operate as an exception to the approach under the GSP because the GSP statute excludes most textile and apparel articles from preferential (that is, duty-free) treatment under the GSP. The **interim** implementing customs regulations were published in the *Federal Register* on October 5, 2000 (65 *Federal Register* 59668-59681) and are codified in title 19, Code of Federal Regulations (CFR) sections 10.211-10.217. Section 3108 of the Trade Act of 2002 amended the AGOA. New interim amendments to the customs regulations implementing the changes were published in the *Federal Register* on March 21, 2003 (68 *Federal Register* 13820).

Certain textile and apparel articles that are imported directly into the customs territory of the United States from an eligible beneficiary sub-Saharan African country which has been designated as eligible for textile and apparel benefits will enter the United States free of duty and free of any quantitative limitations, if the country has satisfied the requirements set forth in the Act. The Harmonized Tariff Schedule of the United States (HTSUS) has been amended by inserting new U.S. notes in subchapter II of chapter 98 and a new subchapter XIX in chapter 98 to cover the new benefits.

The following countries have been designated eligible beneficiary countries for textile and apparel benefits under the AGOA as of June 23, 2003. All of the listed countries, except for the two in **bold** type, are considered **lesser developed countries (LDCs)** for purposes of receiving benefits under the AGOA.

Republic of Botswana
Republic of Cameroon
Republic of Cape Verde
Ethiopia
Republic of Ghana
Republic of Kenya
Republic of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mauritius

Republic of Mozambique
Republic of Namibia
Republic of Rwanda
Republic of Senegal
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

What articles are covered?

These products are as follows:

- **9802.00.8042, visa grouping 1:** Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics* wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, that are entered under subheading 9802.00.80 of the HTSUS.
- **9819.11.03, visa grouping 2:** Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics* wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, the foregoing which (1) are embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes, and (2) but for such embroidery or processing are of a type otherwise described in heading 9802.00.80 of the HTSUS.
- **9819.11.06, visa grouping 3:** Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from fabrics* wholly formed in the United States and cut in one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both.
- **9819.11.09, visa grouping 4:** Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabrics* wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries. [This preference grouping has limitations on benefits.]
- **9819.11.12, visa grouping 5:** Apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric or the yarn used to make such articles. **[Please note that US or foreign components, including knit-to-shape components, may not be utilized in this provision.** This preference grouping has limitations on benefits and is currently scheduled to expire on September 30, 2004.]

- **9819.11.15, visa grouping 6:** Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.12 of the HTSUS.
- **9819.11.18, visa grouping 7:** Sweaters, 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries.
- **9819.11.21, visa grouping 8:** Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics or yarn not formed in the United States or in one or more beneficiary sub-Saharan countries, provided that such apparel articles of such fabrics or yarns would be considered an originating good under the terms of general note 12(t) to the HTSUS without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States. The fabrics and yarns in question include:
 - a) fine count cotton knitted fabrics for certain apparel (see general note 12[t], Chapter 61, chapter rules 61.27[A], 61.30[A] and 61.32[A]),
 - b) linen fabrics and yarns of flax, except knitted or crocheted fabrics,
 - c) silk fabrics and yarns, except knitted or crocheted fabrics,
 - d) cotton velveteen,
 - e) fine wale corduroy,
 - f) Harris Tweed,
 - g) certain woven fabrics made with animal hairs (see general note 12[t], chapter 62, chapter rule 2 [D]),
 - h) certain lightweight, high thread count cotton poly-cotton woven fabrics (see general note 12[t], chapter 62, chapter rule 2 [E]),
 - i) certain lightweight, high thread count broadwoven fabrics used in production of men's and boys' shirts (see general note 12[t], chapter 62.SR30, subheading rule a-i), and
 - j) quilted textile products in the piece of heading 5811.00.
- **9819.11.24, visa grouping 8:** Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabrics or yarns designated by the appropriate U.S. government authority in the *Federal Register* as fabrics or yarns not available in commercial quantities in the United States, under any terms as such authority may provide. [See TBT-03-13, available on the CBP web site, for a list of current short supply fabrics and yarns effective May 2003.]
- **9819.11.27, visa grouping 9:** Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral agreements. This provision will be negotiated between The Committee for the Implementation of Textile Agreements (CITA) and each sub-Saharan African country.

- **9819.11.30, also visa grouping 3:** Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States, the foregoing (i) from components cut in the United States and in one or more beneficiary sub-Saharan African countries from fabrics* wholly formed in the United States from yarns wholly formed in the United States, or (ii) from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or (iii) from any combination of two or more of the foregoing knitting-to-shape or cutting operations.

* 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.

What definitions are used?

For purposes of these provisions, CBP uses the following definitions:

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 when used in the context of a textile or apparel article has reference to a joining together of two or more 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.

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.

Knit-to-shape articles means 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."

Knit-to-shape components when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is "knit-to-shape."

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.

Originating means having the country of origin determined by application of the provisions of 19 CFR §102.21.

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 fabrics. "Wholly formed, " 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 the United States or in one or more beneficiary countries.

Wholly formed on seamless knitting machines. "Wholly formed on seamless knitting machines," when used to describe apparel articles, has reference to a process that created a knit-to-shape apparel article by feeding yarn(s) into a knitting machine to result in that article. When taken from the knitting machine, an apparel article created by this process either is in its final form or requires only minor cutting or trimming or the addition of minor components or parts such as patch pockets, appliques, capping, or elastic strip.

Wholly formed yarns. "Wholly formed," when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in a single country.

What special rules apply?

Section 112 also sets forth special rules for purposes of determining the eligibility of articles for preferential treatment. These special rules are as follows:

- **Findings and trimmings.** As a general rule, 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 general rule, sewing thread will not be treated as findings or trimmings in the case of an article for which assembly by U.S. thread is a requirement for eligibility for preferential treatment. See, 9819.11.06 and 9819.11.30, visa grouping 3, above.

- **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. There is also a provision 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.
- **De minimis rule.** There is 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.

CBP Procedures

In order to claim preferential treatment under section 112, the articles must be imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country and an importer must make a written declaration that the article qualifies and be in possession of a valid Certificate of Origin. In the case of any article described in subheading 9802.00.8042, or 9819.11.03 - 9819.11.30, 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.

Certificate of Origin and Declaration

Any importer who claims preferential treatment under section 112 must comply with CBP procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented by regulations. This NAFTA provision concerns the use of a Certificate of Origin and specifically requires that the importer:

- make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good,
- have the Certificate in its possession at the time the declaration is made,
- provide the Certificate to CBP on request, and
- promptly (within 30 calendar days after the date of discovery of the error) 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.

The Certificate of Origin must be prepared by the exporter in the beneficiary country in the form specified in the regulations (reproduced in the Appendix to this publication). 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:

- Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or
- A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

A Certificate of Origin submitted to CBP:

- Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose;
- Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;
- 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 CBP upon request a written English translation of the Certificate; and
- May be applicable to:
 - 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
 - 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. "Identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

Correction and non-acceptance of Certificate. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with the regulations, the importer will be given a period of not less than five working days to submit a corrected Certificate. A blanket Certificate will not be accepted in connection with subsequent importations during the remaining period covered by the Certificate if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

The Certificate of Origin that otherwise would be required will not be required 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.

An importer is not required to have a Certificate of Origin in his possession (except as otherwise provided below), for:

- 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;
- A non-commercial importation of an article; or
- 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:

<p>I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.</p> <p>Check One:</p> <p><input type="checkbox"/> Producer</p> <p><input type="checkbox"/> Exporter</p> <p><input type="checkbox"/> Importer</p> <p><input type="checkbox"/> Agent</p> <p>Name _____</p> <p>Title _____</p> <p>Address _____</p> <p>Signature and Date _____</p>

Exception. If the port director determines that an importation described above 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, 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. 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.

Direct Import Requirement

As previously stated, in order to claim preferential treatment, the articles must be imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country. For purposes of this provision, the words “*imported directly*” mean:

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

- 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
- 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:
 - Remained under the control of the customs authority of the intermediate country;
 - 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
 - Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

Verification and Justification of Claim for Preferential Treatment

A claim for preferential treatment, including any statements or other information contained on a Certificate of Origin submitted to CBP, is 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:

- All records required to be made, kept, and made available to CBP by the importer or any other person under 19 CFR part 163;
- 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
- 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.

Importer requirements. In order to make a claim for preferential treatment, the importer:

- 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 qualifying provisions. 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 prescribed form is a record that would serve these purposes;

- 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 above;
- 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 the regulations were met; and
- Must be prepared to explain, upon request from CBP, how the records and internal controls referred to above justify the importer's claim for preferential treatment.

Penalties

If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile and apparel articles, the President shall deny all benefits under section 112 of the AGOA to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter for a period of 5 years. In Executive Order 13191, the President delegated his authority under this provision to the Committee for the Implementation of Textile Agreements ("CITA"). For purposes of this provision:

- "transshipment" has occurred when preferential treatment has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components, and
- "false information" is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment.

In addition to this AGOA specific penalty, importers, exporters, and others providing false or fraudulent information or otherwise violating the customs laws may be subject to civil penalties and/or criminal fines and imprisonment under the general customs and related laws, and the imported merchandise may be subject to seizure or detention. For example, civil penalties may be assessed under 19 U.S.C. §1592, which prohibits any person from fraudulently or negligently entering, introducing, or attempting to enter or introduce merchandise into the U.S. by means of materially false documentation, information or statements, acts or material omissions.

**African Growth and Opportunity Act
Textile Certificate of Origin**

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	4. Preference Group:
5. Description of Article:	

Group	<i>Each description below is only a summary of the cited CFR provision.</i>	19 CFR
1-A	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States.	10.213(a)(1)
2-B	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.	10.213(a)(2)
3-C	Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. <u>and</u> beneficiary country knit-to-shape components, from U.S. yarns and sewing thread. The U.S. fabrics may be cut in beneficiary countries, or in beneficiary countries <u>and</u> the United States.	10.213(a)(3) or 10.213(a)(11)
4-D	Apparel assembled from beneficiary country fabrics and/or knit-to-shape components, from yarns originating in the U.S. and/or one or more beneficiary countries.	10.213(a)(4)
5-E	Apparel assembled or knit-to-shape and assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make such articles.	10.213(a)(5)
6-F	Knit-to-shape sweaters in chief weight cashmere.	10.213(a)(6)
7-G	Knit-to-shape sweaters 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer.	10.213(a)(7)
8-H	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.213(a)(8) or 10.213(a)(9)
9-I	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.213(a)(10)

6. U.S./African Fabric Producer Name & Address:	7. U.S./African Yarn Producer Name & Address:
	8. U.S. Thread Producer Name & Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply or Designated Fabric or Yarn:

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.

11. Authorized Signature:	12. Company:
13. Name: (Print or Type)	14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:
	17. Telephone: Facsimile:

AGOA TEXTILE CERTIFICATE OF ORIGIN INSTRUCTIONS

Block 1: State the legal name and address (including country) of the exporter.

Block 2: 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 CBP upon request” in block 2. If the producer and the exporter are the same, state “same” in block 2.

Block 3: State the legal name and address of the U.S. importer.

Block 4: Insert the number and/or 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.

Block 5: 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.

(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 4.)

Block 6: State the legal name and address (including country) of the fabric producer.

Block 7: State the legal name and address (including country) of the yarn producer.

Block 8: State the legal name and address of the U.S. thread producer.

Block 9: State the name of the textile folklore article or state that the article is handloomed fabric or handmade article made of handloomed fabrics.

Block 10: Complete only when preference group “8” and/or “H” is inserted in block 4. State the name of the fabric or yarn that is in short supply in the NAFTA, or that has been designated as not available in commercial quantities in the United States.

Block 11: The textile certificate of origin must be signed by the producer in the beneficiary country. An exporter who is not the producer may sign the certificate on the basis of reasonable reliance on the producer’s written representation that the article qualifies, or on a completed and signed certificate of origin from the producer.

Block 12: Insert the company name of the person signing block 11.

Block 13: Type or print the name of the person in block 11.

Block 14: Insert the title of the person in block 11.

Block 15: Insert the date on which the Certificate was completed and signed.

Block 16: Complete if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see 19CFR10.216(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 15). The “to” date is the date on which the blanket period expires.

Block 17: Insert the telephone and facsimile numbers at which the person who signed the Certificate may be contacted.

LIST OF PROCLAMATIONS AND FEDERAL REGISTER NOTICES

Proclamations

1. Proclamation 7350 of October 2, 2000 "To Implement the African Growth and Opportunity Act and To Designate Eritrea as a Beneficiary Developing Country." (Designates beneficiary countries under AGOA, delegates the President's authority to the USTR, and modifies the Harmonized Tariff Schedule) 65 *Federal Register* 59321-59327, October 4, 2000.
2. Proclamation 7383 of December 1, 2000 "To Implement Title V of the Trade and Development Act of 2000 and To Modify the Generalized System of Preferences."
3. Proclamation 13191 of January 17, 2001 "Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act." (Delegations to CITA and USTR) 66 *Federal Register* 7271-7273, January 22, 2001.
4. Proclamation 7400 of January 17, 2001 "To Designate Swaziland as a Beneficiary Sub-Saharan African Country and for Other Purposes." 65 *Federal Register* 7373-7374, January 23, 2001.
5. Proclamation 7626 of November 13, 2002 "To Implement Modifications to the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act." 67 *Federal Register* 69459-69464, November 18, 2002.
6. Proclamation 7657 of March 28, 2003 "To Take Certain Actions Under the African Growth and Opportunity Act With Respect to the Republic of The Gambia and the Democratic Republic of Congo." 68 *Federal Register* 15921, April 2, 2003.

Committee for the Implementation of Textile Agreements (CITA) Notices

1. "Duty and Quota Free Imports of Apparel Articles Assembled From Regional and Other Fabric for Beneficiary Sub-Saharan African Countries." Issued by CITA, 65 *Federal Register* 61148, October 16, 2000.
2. "Procedures in Considering Requests Under the Textile and Apparel 'Short Supply' Provisions of The African Growth and Opportunity Act and The United States-Caribbean Basin Trade Partnership Act." Issued by CITA, 66 *Federal Register* 13502-13504, March 6, 2001.

U.S. Trade Representative Notices

For Notices issued by the U.S. Trade Representative's office, we refer you to <http://www.ustr.gov>.

U.S. Customs Service Regulations

1. "African Growth and Opportunity Act and Generalized System of Preferences." [Interim regulations] Issued by U.S. Customs Service, 65 *Federal Register* 59668-59681, October 5, 2000.
2. "African Growth and Opportunity Act and Generalized System of Preferences." [Interim regulations; corrections] Issued by U.S. Customs Service, 65 *Federal Register* 67260, November 9, 2000.
3. "Trade Benefits Under the African Growth and Opportunity Act." [Interim regulations] Issued by U.S. Customs Service, 68 *Federal Register* 13820, March 21, 2003.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling

(202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the “*What Every Member of the Trade Community Should Know About...*” series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>