

TITLE 19--CUSTOMS DUTIES

CHAPTER I--BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

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

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Subpart C Andean Trade Preference

Sec. 10.201 Applicability.

Source: Sections 10.201 through 10.208 appear at T.D. 98-76, 63 FR 51292, Sept. 25, 1998, unless otherwise noted.

Title II of Pub. L. 102-182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of Sec. 10.202 through 10.207 set forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles under the ATPA are contained in Sec. 10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in Sec. 10.251 through 10.257.

Sec. 10.202 Definitions.

The following definitions apply for purposes of Sec. 10.201 through 10.207:

(a) Beneficiary country. Except as otherwise provided in Sec. 10.206(b), the term "beneficiary country" refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) Eligible articles. The term "eligible" when used with reference to an article means merchandise which is imported directly from a beneficiary country as provided in Sec. 10.204, which meets the country of origin criteria set forth in Sec. 10.205 and the value-content requirement set forth in Sec. 10.206, and which, if the requirements of Sec. 10.207 are met, is therefore entitled to duty-free

treatment under the ATPA. However, the following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in Sec. 10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in Sec. Sec. 10.251 through 10.257.

(c) Entered. The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) Wholly the growth, product, or manufacture of a beneficiary country. The expression "wholly the growth, product, or manufacture of a beneficiary country" has the same meaning as that set forth in Sec. 10.191(b)(3) of this part.

Sec. 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "J" or "J*" in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) Imported directly. The article is imported directly from a beneficiary country as provided in Sec. 10.204.

(b) Country of origin criteria. The article complies with the country of origin criteria set forth in Sec. 10.205.

(c) Value content requirement. The article complies with the value content requirement set forth in Sec. 10.206.

(d) Filing of claim and submission of supporting documentation. The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in Sec. 10.207.

Sec. 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words "imported directly" mean:

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

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the 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

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

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

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

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

Sec. 10.205 Country of origin criteria.

(a) General. Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) Exceptions. No article shall be eligible for duty-free treatment under the ATPA 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. The principles and examples set forth in Sec. 10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

Sec. 10.206 Value content requirement.

(a) General. An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries. For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in Sec.

10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in Sec. 10.202(a).

(c) Materials produced in the United States. For purposes of determining the percentage referred to in paragraph (a) of this section, 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 (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is "produced in the customs territory of the United States" for purposes of this paragraph.

(d) Cost or value of materials--(1) "Materials produced in a beneficiary country or countries" defined. For purposes of paragraph (a) of this section, the words materials produced in a beneficiary

country or countries refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in Sec.

10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be

substantially transformed into a new or different article of commerce 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. The examples set forth in Sec. 10.196(a) of this part, and the principles and examples set forth

in Sec. 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) Questionable origin. When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) Determination of cost or value of materials. (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) Direct costs of processing operations--(1) Items included. For purposes of paragraph (a) of this section, the words direct costs of processing operations mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following,

to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) Items not included. For purposes of paragraph (a) of this section, the words "direct costs of processing operations" do not include items which are not directly attributable to the merchandise

under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) Articles wholly the growth, product, or manufacture of a beneficiary country. Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in Sec. 10.202(a), and

any article produced or manufactured in a beneficiary country as defined in Sec. 10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

Sec. 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) Filing claim for duty-free treatment. Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol "J" as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) Shipments covered by a formal entry--(1) Articles not wholly the growth, product, or manufacture of a beneficiary country--(i) Declaration. In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in Sec. 10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in Sec. 10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, ----- (name), hereby declare that the articles described below (a) were produced or manufactured in -----(country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below: _____

Processing operations performed on articles
Material produced in a beneficiary country or in the U.S.
Number and date of invoices
Description of articles and quantity
Description of processing operations and country of processing
Description of Direct costs of processing operations
Description of material, production process, and country of production
Cost or value of material

Date _____
Address _____
Signature _____

Title _____

(ii) Retention of records and submission of declaration. The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) Value added after final exportation. In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in Sec. 10.202(a), in order to ensure compliance with the value requirement under Sec. 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) Articles wholly the growth, product, or manufacture of a beneficiary country. In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in Sec. 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) Shipments covered by an informal entry. The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the port director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) Evidence of direct importation--(1) Submission. The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in Sec. 10.204.

(2) Waiver. The port director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) Verification of documentation. The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as fully dutiable.