

January 30, 2001

ENT-14 FO:TP:IA:TT SST

TO: Directors, Field Operations

FROM: Executive Director, Trade Programs

PASS TO: Port Directors, Assistant Port Directors, Import Specialists, Inspectors, Entry Specialists, Brokers, Importers and Other Interested Parties

SUBJECT: TBT-01-008 Implementation Information on the African Growth and Opportunity Act (AGOA) for Textiles and Apparel Products (19 C.F.R. 10.211 through 10.217)

REFERENCE: TBT-01-009 Kenya Visa Arrangement
TBT-01-010 Mauritius Visa Arrangement

BACKGROUND:

The Trade and Development Act of 2000 ("the Act"), which was signed into law on May 18, 2000, authorized a new trade and investment policy for sub-Saharan Africa. The President is authorized to designate a sub-Saharan African country as an eligible beneficiary country based on several criteria established in the Act. If the President determines that a beneficiary country is not making continual progress in meeting the requirements described in the Act, the President shall terminate the designation of the country. The preferential tariff treatment provided under AGOA will remain in effect through September 30, 2008.

Section 112 of the Act outlines the treatment of certain textiles and apparel articles for AGOA. Apparel articles that are imported directly into the Customs territory of the United States from a designated beneficiary sub-Saharan African country shall enter free of duty and free of any quantitative limitations (excluding any tariff preference levels identified in the Act) if the country has satisfied the requirements set forth in Section 113.

ENTRY REQUIREMENTS FOR CLAIMING AGOA TREATMENT

In order for a claim to be accepted under the AGOA preferential tariff treatment for textile and apparel products, all of the following requirements must be met:

1. The designated beneficiary sub-Saharan African country has implemented and follows, or is making substantial progress toward implementing the requirements and relevant procedures of Chapter 5 of the North American Free Trade Agreement (NAFTA) and has an effective visa system in place. Effective January 18, 2001, the United States Trade Representative (USTR) has identified Kenya as being eligible for the enhanced trade benefits under AGOA. In the same notice from USTR, it was noted that Kenya qualifies as a lesser developed beneficiary sub-Saharan African country under AGOA. Effective January 19, 2001, the USTR has identified Mauritius as being eligible for the enhanced trade benefits under AGOA,
2. A valid, original textile visa issued from the beneficiary sub-Saharan country and presented to U.S. Customs when making the claim for preferential tariff treatment. Please refer to TBT-01-009 for the visa arrangement with Kenya and TBT-01-010 for the Mauritius visa arrangement,
3. The good is classified under Harmonized Tariff Schedule of the United States (HTSUS) tariff item number 9802.00.80 or 9819.11, along with the associated chapter 1-97 number. **For the list of 9802.00.80 and 9819.11 HTSUS numbers, refer to Preferential Groupings listed below,**
4. An AGOA textile certificate of origin, completed by the exporter, is in the possession of the importer and available upon request to U.S. Customs when the claim is made. The format can be found in 19 C.F.R. 10.214 of the Customs Regulations (published in the **Federal Register** dated October 5, 2000 and the notice of corrections published November 9, 2000). Certificates of origin will not be required for:
 - a. Articles for which the port director has, in writing, waived the requirements for a certificate of origin because the port director is satisfied that the article qualifies for preferential treatment,
 - b. A non-commercial importation,
 - c. A commercial importation of an article whose value does not exceed \$2,500, provided that a statement as identified in 19 C.F.R. 10.216 (d)(iii) is submitted,
5. For articles subject to tariff preference levels in preference grouping 4 and 5, the levels must still be available at the time of the claim; otherwise, payment of duty is required under the associated Chapter 1-97 number,
6. The merchandise must be imported directly from a designated beneficiary sub-Saharan African country listed above, and,

7. The merchandise must be an apparel article classifiable in HTSUS chapters 61, or 62, or headings 6501, 6502, 6503, 6504, or subheadings 6406.99 or 6505.90.

Please note that all existing importing requirements, including the requirements for the current textile declaration have not changed. The above documentation requirements are **in addition to** any other entry documents.

IMPORTER RESPONSIBILITIES

Before making a claim, the following requirements must be met by the importer:

Must have records to explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment,

Must have established and implemented internal controls which provide for the periodic review of the accuracy of the certificates of origin,

Must have shipping papers that show how the article moved from the AGOA beneficiary sub-Saharan African country to the United States, and,

Must be prepared to explain, upon request from Customs, how those records and internal controls mentioned above justify the importer's claim for preferential treatment.

PREFERENTIAL GROUPINGS

A claim for preferential tariff treatment under AGOA may be made if the textile or apparel article qualifies under one of these groupings:

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 such 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. **(9802.00.8042 and visa grouping 1)**
(19 C.F.R. 10.213[a][1])

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 such fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) entered under chapter 61 or 62 of the HTSUS, if, after such 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. **(9819.11.03 and visa grouping 2)**
(19 C.F.R. 10.213[a][2])
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 such fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States) if such articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States.
(9819.11.06 and visa grouping 3) (19 C.F.R. 10.213[a][3])
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 such 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). **(9819.11.09 and visa grouping 4)**
(19 C.F.R. 10.213[a][4])

LIMITATIONS ON BENEFITS

Preferential treatment under this paragraph extends to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. The term 'applicable percentage' means 1.5 percent for the 1-year period beginning October 1, 2000, increased in each of the seven succeeding 1-year periods by equal increments, so that for the period beginning October 1, 2007, the applicable percentage does not exceed 3.5 percent. Please see the subchapter XIX notes in the HTSUS for specific quantities and the appropriate QBT for reporting instructions to be issued.

5. 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 such articles. **(9819.11.12 and visa grouping 5)**

(19 C.F.R. 10.213[a][5])

LIMITATIONS ON BENEFITS

This preference grouping is subject to the same limitations as identified above for those articles classified in 9819.11.09 and visa grouping 4. Imports of either grouping will count towards one tariff preference level.

6. 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. **(9819.11.15 and visa grouping 6) (19 C.F.R. 10.213[a][6])**
7. Sweaters, 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. **(9819.11.18 and visa grouping 7) (19 C.F.R. 10.213[a][7])**
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,
 - c) Silk 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 [E]), and
 - 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). **(9819.11.21 and visa grouping 8) (19 C.F.R. 10.213[a][8])**

Note: An informational notice will be issued shortly to describe more specifically these short supply fabrics.

9. 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 designated by the appropriate U.S. government authority in the Federal Register as fabrics or yarn not available in commercial quantities in the United States, under any terms as such authority may provide **(9819.11.24 and visa grouping 8) (19 C.F.R. 10.213 [a][9])**

To date, no such fabrics have been identified.

10. Handloomed, handmade or folklore textile and apparel goods. This will be negotiated between The President and the sub-Saharan African countries. The ports and the trade community will be notified when such agreements are made. **(9819.11.27 and visa grouping 9) (19 C.F.R. 10.213[a][10])**

SPECIAL DEFINITIONS

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 fabrics, 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.

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 effect the determination of whether an apparel article is “knit-to-shape”.

Imported Directly – refer to the definition 19 C.F.R. 10.213 (c).

Findings And Trimmings General Rule: An article otherwise eligible for preferential treatment shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if the value of such findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. Examples of findings and trimmings are sewing thread (except if the thread is under 9819.11.06), hooks and eyes, snaps, buttons, `bow buds', decorative lace trim, elastic strips, and zippers, including zipper tapes, and labels. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and used in the production of brassieres.

Certain Interlinings General Rule: An article otherwise eligible for preferential treatment shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. Interlinings eligible for the treatment described above 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.

De Minimis Rule: An article otherwise eligible for preferential treatment shall not be ineligible for such 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 such fibers and yarns is not more than 7 percent of the total weight of the article.

VERIFICATION OF CLAIMS FOR PREFERENTIAL TARIFF TREATMENT UNDER AGOA (19 C.F.R. 10.215 – 10.217)

A claim for preferential tariff treatment must be based on a valid certificate of origin that is in the possession of the importer at the time that the claim is made. The decision to grant preferential tariff treatment is the responsibility of the U.S. Customs Service in compliance with the eligibility criteria. Importers should be prepared to provide the certificate of origin to confirm qualification within 30 days. Customs officers at the ports should request the certificate of origin from the importer to confirm qualification. Backup documentation such as mill invoices may also be requested from the importer.

A verification of a claim for preferential tariff 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 19 C.F.R. 163;
2. Documentation and other information in an AGOA 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 the production, and the number of workers employed in production; and
3. Evidence in an AGOA 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.

Failure to provide either the certificate of origin or the requested documentation will result in the denial of the claim.

QUOTA / VISA REQUIREMENTS

Section 112(c) of AGOA provides that the President shall eliminate the existing quotas on textile and apparel articles imported into the United States from Kenya and Mauritius within 30 days after each country adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States. A QBT will be issued when the existing quotas have been eliminated.

A valid visa must be presented at time of entry otherwise the claim for preferential tariff treatment will be denied. The beneficiary sub-Saharan African country shall issue a visa for each shipment of textiles or textile articles, regardless of value, as identified as Groupings 1 to 9 and exported to the United States. The visa shall be presented to the U.S. Customs Service at time of entry, or withdrawal from warehouse for consumption, into the Customs territory of the United States if preferential tariff treatment is claimed.

A shipment shall be visaed by the stamping of the original circular visa in blue ink only on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States claiming the preferential tariff treatment. Duplicates of the invoice and/or visa may not be used for this purpose.

Merchandise entered under 9819.11.09 and 9819.11.12 must be filed as quota/visa type entries (i.e. "02", "32") and reported to quota.

When the AGOA preferential tariff treatment is being claimed utilizing 9802.00.8042 or 9819.11 of the HTSUS the AGOA visa will be reported in the visa field (block 34 of the CF 7501).

Please refer to TBT-01-009 and TBT-01-010 for specific information regarding the visa arrangements with Kenya and Mauritius, respectively.

OTHER ISSUES

Textile and apparel articles entered at the normal duty rates because the importer did not possess a valid certificate of origin or textile visa to make a claim, that have met the above provisions, can avail themselves of all the available post entry procedures with the exception of NAFTA 520 (d).

Entries for articles classified in the following HTSUS numbers must be filed non-ABI until further notice:

9802.00.8042

9819.11.03
9819.11.06
9819.11.09
9819.11.12
9819.11.15
9819.11.18
9819.11.21
9819.11.24
9819.11.27

For merchandise reported utilizing AGOA under a HTSUS 9819 classification, the value for the articles should be reported in the HTSUS chapter 1-97 classification. No value should be reflected in the HTSUS 9819 classification.

ACTION:

For qualifying merchandise entered, or withdrawn from warehouse for consumption, on or after January 18, 2001, claims for preferential tariff treatment under AGOA may be made if all necessary requirements are met for Kenya.

For qualifying merchandise entered, or withdrawn from warehouse for consumption, on or after January 19, 2001, claims for preferential tariff treatment under AGOA may be made if all necessary requirements are met for Mauritius.

Until the necessary programming is completed, the ports must fax a copy of utilized visas to the New York Strategic Trade Center at (212) 637-7742. Please fax the visas on Friday for all visas presented that week. A notice will be issued when the programming has been completed.

INFORMATION:

If you have any questions concerning this notice, please call Susan Thomas at (202) 927-3719, Gina Tayler at (202) 927-4882, Cherie Parsons at (202) 927-7002 or Robert Abels at (202) 927-1959.

/s/

Elizabeth G. Durant

cc: Executive Director, Field Operations