

January 12, 2001

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TO : Directors, Field Operations
Port Directors
Assistant Port Directors, Trade

FROM : Executive Director, Trade Programs

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

SUBJECT: Implementation Information on the Non-Textile "Enhanced"
GSP Provisions of the African Growth and Opportunity Act

BACKGROUND:

The Trade and Development Act of 2000 ("the Act"), was signed into law on May 18, 2000. Title I of the Act authorizes a new trade and investment policy for designated countries of sub-Saharan Africa (SSA) and is referred to in the Act as the "African Growth and Opportunity Act" (AGOA). The AGOA was scheduled for implementation on October 1, 2000. Presidential Proclamation 7350, which implemented the AGOA and designated eligible countries, was published in the Federal Register on October 4, 2000 (65 FR 59321).

Presidential Proclamation 7388, dated December 18, 2000, designated the Harmonized Tariff Schedule (HTS) item numbers that are eligible for duty-free treatment under the provisions of the AGOA. Proclamation 7388 was published in the Federal Register on December 21, 2000 (65 FR 80723).

Interim Customs regulations implementing the trade provisions of the AGOA were published in the Federal Register on October 5, 2000 (65 FR 59668). A new section of the regulations, 19 CFR 10.178a, covers the enhanced GSP preferential tariff treatment provisions for non-textile articles originating in sub-Saharan African countries.

Title I of the AGOA provides for preferential tariff treatment for textile and apparel articles as well as enhanced Generalized System of Preferences (GSP) benefits for certain goods currently excluded from GSP eligibility.

This memorandum concerns only the enhanced GSP provisions found in section 111 of the AGOA.

ELIGIBLE ARTICLES:

Section 111 amends the Trade Act of 1974 by adding a new section, section 506A(b)(1) (19 USC 2466a(b)(1)). This new section authorizes the President to provide duty-free treatment for certain articles that are otherwise excluded from GSP eligibility if those articles originate in designated SSA countries. The duty-free treatment will apply to the following articles, provided that the President designates the article as eligible; the article is the growth, product or manufacture of an eligible beneficiary SSA country; and the article meets the origin and related rules described later in this memorandum:

- 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 U.S. insular possessions (the excepted watches already qualify for GSP treatment);
- Certain electronic articles;
- Certain 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;
- Certain semi-manufactured and manufactured glass products; and
- Any other articles which the President determines to be import-sensitive in the context of the GSP.

Attachment (1) lists the HTS item numbers that were designated in Presidential Proclamation 7388 as eligible for duty-free treatment under the enhanced GSP provisions of the AGOA.

RULES OF ORIGIN:

19 CFR 10.171 through 10.178 list the origin and related rules for all GSP articles. The provisions of 19 CFR 10.171, 10.173 and 10.175 through 10.178 will apply to articles of SSA countries that are eligible for the enhanced GSP benefits, with the following amendments, provided for in 19 CFR 10.178a(d):

- The term "beneficiary developing country" means "beneficiary sub-Saharan African country;"

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- In the GSP declaration set forth in 19 CFR 10.173(a)(1)(i), the column heading "Materials produced in a beneficiary developing country or members of the same association" should read "Material produced in a beneficiary Sub-Saharan African country or in the United States;"
- The provisions of 19 CFR 10.175(c) will not apply; and
- For purposes of determining compliance with the 35% value content requirement set forth in 19 CFR 10.176(a):
 - An amount not to exceed 15% of the appraised value at time of entry may be attributed to the cost or value of materials produced in the customs territory of the United States (the provisions of 19 CFR 10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials); and
 - The cost or value of materials included in the article that are produced in one or more beneficiary SSA country may be applied without regard to membership in an association of countries.

In brief, any article described above that is wholly the growth, product or manufacture of, or is a new or different article of commerce that has been grown, produced or manufactured in a beneficiary SSA country, meeting the 35% value-content requirement, may qualify for duty-free treatment under the enhanced GSP provisions of the AGOA. Simple packaging or combining operations, or mere dilution with water or another substance, are not sufficient to confer origin for purposes of the AGOA.

BENEFICIARY COUNTRIES:

Section 107 of the AGOA defined sub-Saharan Africa as 48 specific countries or their successor political entities. The President is authorized to designate any of those 48 countries as a "beneficiary sub-Saharan African country." Presidential Proclamation 7350 designated the following 35 SSA countries as beneficiary SSA countries for purposes of the AGOA:

Republic of Benin
 Republic of Botswana
 Republic of Cape Verde
 Republic of Cameroon
 Central African Republic
 Republic of Chad

Gabonese Republic
 Republic of Ghana
 Republic of Guinea
 Republic of Guinea-Bissau
 Republic of Kenya
 Kingdom of Lesotho

Republic of Congo
Republic of Djibouti

Republic of Madagascar
Republic of Malawi

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State of Eritrea
Ethiopia
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of Sao
Tome and Principe

Republic of Mali
Islamic Republic of Mauritania
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

In addition, the following countries have been designated as "lesser developed beneficiary SSA countries."

Republic of Benin
Republic of Cape Verde
Republic of Cameroon
Central African Republic
Republic of Chad
Republic of Congo
Republic of Djibouti
State of Eritrea
Ethiopia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar

Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mozambique
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of Sao
Tome and Principe
Republic of Senegal
Republic of Sierra Leone
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

EXPIRATION DATE:

The expiration date for this enhanced GSP program is September 30, 2008. Designated articles will remain eligible for duty-free treatment under the enhanced GSP provisions until that date. Articles designated under the standard GSP program will remain subject to occasional expirations and renewals. Standard GSP is next scheduled to expire on September 30, 2001.

IMPORTER REQUIREMENTS:

In order to make a claim for duty-free treatment under the enhanced GSP provisions of the AGOA, the importer must meet the following requirements:

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- Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;
- Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth, or the product, or the manufacture of a beneficiary SSA country.
- For articles grown in a beneficiary SSA country, the importer must have records that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country;
- For articles produced or manufactured in a beneficiary SSA country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in 19 CFR 10.176(a) and 10.178a(d);
- Must establish and implement internal controls that provide for the periodic review of the accuracy of the declarations or other records referred to in 19 CFR 10.178a(e)(2);
- Must have shipping papers that show how the article moved from the beneficiary SSA country to the United States. If the imported article was shipped through a country other than a beneficiary SSA country and the invoices and other documents from the beneficiary SSA country do not show the United States as the final destination, the importer must also have documentation that demonstrates that the conditions of 19 CFR 10.175(d)(1) were met;
- Must have records that demonstrate the cost or value of the materials produced in the U.S. or a beneficiary country or countries and the direct costs of processing operations incurred in the beneficiary SSA country that were relied upon by the importer to determine that the 35% value content requirement were met; and
- Must be prepared to produce the records described above within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls described above justify the importer's claim for duty-free treatment.

VERIFICATION BY CUSTOMS:

The verification procedures provided for under 19 CFR 10.173 will also apply to claims made under the enhanced GSP portions of the AGOA.

Failure to provide sufficient documentation to support the claim to Customs upon request will result in the claim's denial.

ACTION:

Section 111 of the African Growth and Opportunity Act extends enhanced GSP treatment to certain non-import-sensitive, non-textile products that originate in designated SSA countries. Effective for goods entered, or withdrawn from warehouse for consumption, on or after December 21, 2000, importers may file claims for preferential tariff treatment under this program of designated articles that originate in beneficiary SSA countries.

Importers or their agents may also avail themselves of all available post-entry procedures, with the exception of NAFTA 520(d) claims, to receive a refund of duties for eligible AGOA non-textile articles entered, or withdrawn from warehouse for consumption, on or after December 21, 2000, the effective date of Presidential Proclamation 7388.

To claim AGOA preferential tariff treatment, the importer must make a written declaration that the article qualifies for AGOA preferential treatment. Such claim shall be made at the time of filing the entry summary by placing on the document the Special Program Indicator (SPI) "D" as a prefix to the HTS item number for each article for which such treatment is claimed.

As of the writing of these instructions, the Automated Commercial System (ACS) has not been updated to allow for automated processing of these entries. Until further notice from the Office of Trade Programs at Customs Headquarters, importers claiming preference under the enhanced GSP provisions of the AGOA must file their entries manually. Importers may continue to file claims through the Automated Broker Interface (ABI) for those articles eligible for standard GSP treatment.

Questions regarding the non-textile provisions of the AGOA should be directed to Arlene Lugo, Trade Agreements Branch, at 202-927-4183.

/s/

Paul K. Schwartz, for
Elizabeth G. Durant

Attachment

cc: Executive Director, Field Operations