

AGOA

African Growth and Opportunity Act



ALL YOU HAVE TO KNOW ABOUT
TRADING UNDER THE
AFRICAN GROWTH AND OPPORTUNITY ACT

(PUBLIC INFORMATION LEAFLET: NO.3)

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 Customs

Publication History

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PREFACE

Importing Merchandise into the United States

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (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 emerged from the Mod Act

1 “**informed compliance**” - the trade community needs to be clearly and completely informed of its legal obligations. Customs must provide the public with improved information concerning the trade community’s rights and responsibilities under the Customs and related laws.

2 “**shared responsibility**” - both the trade and Customs community share responsibility for carrying out these requirements.

For example,

The importer 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 Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met.

Customs are responsible for fixing the final classification and value of the merchandise.

An importer’s failure to exercise reasonable care could delay the release of the merchandise and, in some cases, could result in the imposition of penalties.

Customs have 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, ***All you need to know about trading under the African Growth and Opportunity Act (AGOA)***, is intended to provide general information to the public on the trade benefits available under AGOA which are administered by Customs.

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, or to obtain advice from an expert who specializes in Customs matters, for example, a licensed Customs broker, attorney or consultant.

- For additional information concerning the textile and apparel portions of the law, including copies of the law and Proclamations see Office of Textiles and Apparel website: http://www.otexa.ita.doc.gov/Trade_Act_2000.htm.
- For information on the General System of Preferences (GSP) program and downloadable guides see: www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html
- For further information on AGOA see the AGOA web site; www.AGOA.gov

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GLOSSARY

GLOSSARY OF TERMS

AGOA	African Growth and Opportunity Act
Customs	The Bureau of Customs and Border Protection
GSP	General System of Preferences
Listed Countries	Countries (or any successor political entities) that are included in the Act as “sub-Saharan African”.
The Act	Trade and Development Act of 2000
Transaction Value	Price actually paid or payable for the goods when sold for export to the United States
HTSUS	Harmonized Tariff Schedule of the United States
CBP	Customs and Border Protection
NAFTA	North American Free Trade Agreement Implementation Act
CITA	Committee for the Implementation of Textile Agreement
Mod Act	Custom’s Modernization Act
CFR	Code of Federal Regulations

INTRODUCTION

On May 18, 2000, 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.

Subtitle A of Title I,

- 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 November 13 2002, certain amendments were implemented to the AGOA to modify the treatment accorded to certain textile and apparel articles imported from beneficiary AGOA countries.

On July 13 2004, further amendments were made (AGOA III), which extends preferential access for imports until September 30 2015 and extends third country fabric provisions until September 2007.

This publication does not cover the procedures for being designated an eligible beneficiary sub-Saharan African country. That information is available in “*AGOA Implementation Guide*” (October 2000) see <http://www.ustr.gov/regions/africa/agoaguides.html>.

List of Sub-Saharan African Countries

Countries (or any successor political entities) that are included in the Act as “sub-Saharan African” countries are referred to as “listed countries” in this publication (**see Appendix 1**)

NOTE - AGOA eligibility **does not** automatically imply eligibility under the textile and apparel provisions, which require the 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.

Countries **eligible** for the textile and apparel provisions of AGOA as of June 23, 2003 can be found in the section discussing **Textile and Apparel Products**. (**see Appendix 2**)

SECTION 2

GENERAL SYSTEM OF PREFERENCES (GSP)

“DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.”

2.1 What articles are covered?

Duty-free treatment is allowed 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.

- Providing that article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

The articles that are normally **excluded** from duty-free treatment under the GSP include:

- Watches, except those watches entered after June 30, 1989, that, 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 determined 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>.

2.2 What are the rules?

Duty-free treatment will apply to any designated article that meets the requirements of the basic GSP origin and related rules and AGOA specific 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 three 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 assembly of goods either in the United States or Sub-Saharan Africa from eligible materials

Note - What do Customs mean by appraised value. This is taken to mean the Transaction Value which includes;

- Packing costs incurred by the buyer
- Selling commission incurred by the buyer
- Value of any assistance provided to the producer free of charge by the buyer
- Royalty or license fee that the buyer is required to pay as a condition of the sale
- Proceeds accruing to the seller of any subsequent resale, disposal, or use of the imported merchandise

The above costs are in addition to the **direct cost of processing**. These include all costs, whether directly incurred in or those that can be reasonably allocated to the growth, production, manufacture, or assembly of the merchandise in question. These include:

- Actual labor, fringe benefits, and on-the-job training costs
- Engineering, supervisory, quality control, and similar personnel costs
- Dies, molds, and tooling costs, as well as depreciation of machinery and equipment
- Research, development, design, blueprints and engineering, and inspection and testing costs.

The costs that may **NOT** be included in the direct costs of processing are those are not "costs" of manufacturing. These include: profit and general expenses and business overhead such as administrative salaries; casualty and liability insurance; advertising; and sales representative's salaries, commissions or expenses.

In general, shipping and other costs related to transporting the articles from the port of export to the U.S. are included neither in the value of the article nor in the value-added calculation.

NOTE - The Act amends the GSP statute by providing for continuation of GSP duty-free treatment until 2015, in the case of a beneficiary sub-Saharan African country.

2.3 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.

Eg. A properly completed GSP declaration in the form set forth in 19 CFR §10.173(a)(1)

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 Customs.
- Be prepared to explain how those records and the internal controls referred to above justify the importer's claim for duty-free treatment.

SECTION 3

3.1 Textile and Apparel Products

Section 112 of the Act (outside the GSP statutory framework) sets forth rules that provide for the preferential treatment of certain textile and apparel products. These rules 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.

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.

Certain listed countries have been designated eligible beneficiary countries for textile and apparel benefits under the AGOA as of June 23, 2003. (For the list of designated countries see appendix 2)

3.2 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, 2007.]
- **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 Customs 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. This now includes the use of certain machine made ethnic printed fabric made in Sub-Saharan Africa or the United States.
- **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.

3.3 What definitions are used?

For purposes of these provisions, Customs use 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 including **Non AGOA** produced 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(see Appendix 4)

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.

3.4 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 10 percent of the total weight of the article.

3.5 Customs 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
- The 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.

3.6 Certificate of Origin and Declaration

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

- make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good,
- have the Certificate in his possession at the time the declaration is made,
- provide the Certificate to Customs 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 Appendix 3).

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 Customs must;

- Be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;
- Be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;
- Be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and
- 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.

3.7 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 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:

I hereby certify that the article covered by this shipment qualifies

For preferential treatment under the AGOA.

Tick One:

Producer

Exporter

Importer

Agent

Name

Title

Address

Signature and Date

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.
- 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.

3.8 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.

3.9 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 Customs, 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 Customs 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.

3.10 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 Customs, how the records and internal controls referred to above justify the importer's claim for preferential treatment.

3.11 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.

APPENDICES

APPENDIX 1

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.

NOTE - AGOA eligibility **does not** automatically imply eligibility under the textile and apparel provisions, which require the 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**.

Republic of Angola

Republic of Benin*

Republic of Botswana*

Burkina Faso

Republic of Cameroon*

Republic of Cape Verde*

Republic of Chad

Democratic Republic of Congo

Republic of the Congo

Republic of Djibouti

Ethiopia*

Gabonese Republic

Republic of the Gambia

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 Mauritius*

Republic of Mozambique*

Republic of Namibia*

Republic of Niger*

Federal Republic of Nigeria*

Republic of Rwanda*

Democratic Republic of São Tomé and Príncipe

Republic of Senegal*

Republic of Seychelles*

Republic of Sierra Leone*

Republic of South Africa

Kingdom of Swaziland*

United Republic of Tanzania*

Republic of Uganda*

Republic of Zambia*

NOTE:

All in **bold** are countries eligible for Apparel Provision

* Country with special rule for apparel

APPENDIX 2

AGOA Eligible Countries for Textiles and Apparel

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

APPENDIX 3

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	Each description below is only a summary of the cited CFR provision.	19 CFR	
1-A	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. <u>All fabric must be cut in the United States.</u>	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. Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components	10.213(a)(2)	
3-C	Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. and 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 and 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

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

Box 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 CUSTOMS upon request” in Box 2. If the producer and the exporter are the same, state “same” in Box 2.

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

Box 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.

Box 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.

(Boxes 6 through 10 must be completed only when the Box in question calls for information that is relevant to the preference group identified in Box 4.)

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

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

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

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

Box 10: Complete only when preference group “8” and/or “H” is inserted in Box 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.

Box 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.

Box 12: Insert the company name of the person signing Box 11.

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

Box 14: Insert the title of the person in Box 11.

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

Box 16: Complete if the Certificate is intended to cover multiple shipments of identical articles as described in Box 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 Box 15). The “to” date is the date on which the blanket period expires.

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

APPENDIX 4

CFR 102.21 Textile and apparel products.

(a) *Applicability.* Except for purposes of determining whether goods originate in Israel or are the growth, product, or manufacture of Israel, and except as otherwise provided for by statute, the provisions of this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws and the administration of quantitative restrictions. The provisions of this section shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996.

(b) *Definitions.* The following terms shall have the meanings indicated when used in this section:

(1) *Country of origin.* The term *country of origin* means the country, territory, or insular possession in which a good originates or of which a good is the growth, product, or manufacture.

(2) *Fabric-making process.* A *fabric-making process* is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric.

(3) *Knit to shape.* The term *knit to shape* applies to any good 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 good, 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 a good is “knit to shape.”

(4) *Major parts.* The term *major parts* means integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.

(5) *Textile or apparel product.* A *textile or apparel product* is any good classifiable in the Harmonized Tariff Schedule of the United States (HTSUS),

(6) *Wholly assembled.* The term “wholly assembled” when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliques, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

(c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

(d) Treatment of sets. Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or apparel product shall be determined separately under paragraph (c) of this section.

U.S. Trade Representative Notices

For Notices issued by the U.S. Trade Representative's office, contact www.ustr.gov.

Customs Notices

The publication "*Importing Into the United States*" provides an overview of the importing process and contains general information about import requirements. The 1998 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 Customs by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

An on-line version is available at the Customs web site, www.Customs.gov.

Enquiries about this publication should be directed to:
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ALL YOU HAVE TO KNOW ABOUT

TRADING UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

The concept of Rules of Origin has become increasingly important for international trade. In fact, the implementation of preferential trade regimes and the application of trade measures, such as, import bans and prohibitions, discriminatory restrictions, tariff quotas, among others, depend on the application of rules of origin.

This leaflet has been prepared by the ECA Trade Hub based on the AGOA regulations and procedures to ensure that the business community understands and makes full use of the principles and rules of the Protocol on Rules of Origin.

