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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 163, and 178

CBP Dec. 14-07

RIN 1515-AD47 (former RIN 1505-AB26) and RIN 1515-AD50 (former RIN 1505-AB38)

African Growth and Opportunity Act (AGOA) and Generalized System of Preferences and Trade Benefits under AGOA

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to the U.S. Customs and Border Protection (CBP) regulations which were published in the **Federal Register** on October 5, 2000, as T.D. 00-67, and later amended by T.D. 03-15 published in the **Federal Register** on March 21, 2003, to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000, as amended. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (AGOA), apply to sub-Saharan African countries designated by the President and involve: the extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded from GSP duty-free treatment that are not import-sensitive; and the entry of

specific textile and apparel articles free of duty and free of any quantitative limits.

The regulatory amendments adopted as a final rule in this document reflect and clarify the statutory standards for preferential tariff treatment under the AGOA, as amended by section 3108 of the Trade Act of 2002 and include other amendments necessitated by passage of the AGOA Acceleration Act of 2004 and the Africa Investment Incentive Act of 2006. This final rule includes specific documentary, procedural and other related requirements that must be met in order to obtain preferential treatment. This document also adopts as a final rule interim amendments to the CBP regulations implementing the GSP which were included in T.D. 00-67 to conform those regulations to previous amendments to the GSP statute. Moreover, this document adopts as a final rule other changes to the AGOA implementing regulations made by T.D. 03-15 to clarify several issues that arose after their original publication.

DATES: Effective [Insert date 30 days after date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

African Growth and Opportunity Act

On May 18, 2000, the President signed into law the Trade and Development Act of 2000,

Public Law 106-200, 114 Stat. 251. Title I of the Trade and Development Act of 2000 (Act of 2000) is referred to as the African Growth and Opportunity Act (AGOA) and authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa.

Subtitle A of Title I of the Trade and Development Act of 2000 concerns trade policy for sub-Saharan Africa. Subtitle A is codified at 19 U.S.C. 3701-3706 and includes section 104 (19 U.S.C. 3703) which (1) 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 (2) requires that the President terminate a designation if the President determines that an eligible country is not making continual progress in meeting those requirements. Subtitle A also includes section 107 (19 U.S.C. 3706) which, for purposes of Title I, defines the terms “sub-Saharan Africa” and “sub-Saharan African country” and variations of those terms with reference to 48 listed countries.

Subtitle B of Title I of the Trade and Development Act of 2000 concerns trade benefits under the AGOA. The provisions within Subtitle B to which this document relates are sections 111, 112 and 113. These sections will be discussed in detail below.

On October 2, 2000, the President signed Proclamation 7350 to implement the provisions of the AGOA. The Proclamation, which was published in the **Federal Register** (65 FR 59321) on October 4, 2000, designated certain countries as beneficiary sub-Saharan African countries and modified the Harmonized Tariff Schedule of the United States (HTSUS) as set forth in the Annex to the Proclamation by, among other things, the addition of a new Subchapter XIX to Chapter 98 to address the majority of the textile and apparel provisions of the AGOA.

On October 5, 2000, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (65 FR 59668) as T.D. 00-67 an interim rule setting forth amendments to the

CBP regulations to implement the trade benefit provisions of the AGOA. Sections 10.211 through 10.217 of the CBP regulations (19 CFR 10.211 through 10.217) set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment of certain textile and apparel articles pursuant to sections 112 and 113 of the AGOA. In addition, T.D. 00-67 included interim amendments to the existing CBP regulations implementing the Generalized System of Preferences (GSP) program to conform those regulations to previous statutory amendments or other changes involving the GSP program. Furthermore, on November 9, 2000, a correction document pertaining to T.D. 00-67 was published in the **Federal Register** (65 FR 67260). Action to adopt those interim regulations as a final rule was withheld pending anticipated action on the part of Congress to amend the underlying statutory provisions.

Trade Act of 2002

On August 6, 2002, the President signed into law the Trade Act of 2002 (Act of 2002), Public Law 107-210, 116 Stat. 933. Sections 3108(a) and (b) of the Act of 2002 amended section 112(b) of the AGOA (codified at 19 U.S.C. 3721(b)) which specifies the textile and apparel articles to which preferential treatment applies under the AGOA. The majority of the provisions of section 112 of the AGOA are reflected for tariff purposes in Subchapter XIX, Chapter 98, HTSUS.

On November 13, 2002, the President signed Proclamation 7626 (published in the **Federal Register** at 67 FR 69459 on November 18, 2002) which, among other things, in Annex II set forth modifications to the HTSUS to implement the changes to section 112(b) of the AGOA made by sections 3108(a) and (b) of the Act of 2002. The Proclamation provided that the HTSUS modifications that implement the changes made by section 3108(a) of the Act of 2002 are effective with respect to eligible articles entered, or withdrawn from warehouse for

consumption, on or after August 6, 2002. The Proclamation further provided that the HTSUS modifications that implement the changes made by section 3108(b) are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

On March 21, 2003, CBP published in the **Federal Register** (68 FR 13820) as T.D. 03-15 an interim rule document setting forth amendments to the CBP regulations that implement the trade benefits for sub-Saharan African countries contained in the AGOA. T.D. 03-15 involved the textile and apparel provisions of the AGOA and in part reflected the changes made to those statutory provisions by section 3108 of the Act of 2002.

AGOA Acceleration Act of 2004

On July 13, 2004, the President signed into law the AGOA Acceleration Act of 2004 (Act of 2004), Public Law 108-274, 118 Stat. 820. Section 7(a)(1) of the Act of 2004 amended Title V of the Trade Act of 1974 (the Generalized System of Preferences, or GSP, statute) at section 506B (codified at 19 U.S.C. 2466b) by extending GSP duty-free treatment through September 30, 2015, in the case of a beneficiary sub-Saharan African country as defined in section 506A(c) of the GSP statute (codified at 19 U.S.C. 2466a(c)).

Section 7(a)(2)(A) of the Act of 2004 amended section 506A(b)(2)(B) of the GSP statute (codified at 19 U.S.C. 2466a(b)(2)(B)) by providing for the inclusion of the cost or value of materials produced in one or more “former beneficiary sub-Saharan African countries” in determining whether the GSP 35% value-content rule has been satisfied in regard to an article described in section 506A(b)(1) (non-textiles). Section 7(a)(2)(B) of the Act of 2004 amended section 506A(c) to include a definition of “former beneficiary sub-Saharan African country.”

Sections 7(b), (c) and (d) of the Act of 2004 amended section 112(b) of the AGOA

(codified at 19 U.S.C. 3721(b)) which specifies the textile and apparel articles to which preferential treatment applies under the AGOA. These amendments to section 112(b) were as follows:

1. The article description in the introductory text of paragraph (b)(1) was amended by inserting the words “or both” immediately before the parenthetical matter. The effect of this change is to clarify that the apparel articles described in this paragraph may be made both from fabrics wholly formed and cut in the United States and from components knit-to-shape in the United States.

2. The portion of the article description in the introductory text of paragraph (b)(3) relating to the origin of the yarns from which the article is made was amended by replacing the words “either in the United States or one or more beneficiary sub-Saharan African countries” each place they appear with the words “in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both.” The introductory text of paragraph (b)(3) was further amended by inserting the words “whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2))” immediately before the words “subject to the following.” The effect of the latter amendment is to extend preferential treatment under this paragraph to include apparel articles made in part from fabrics, fabrics components or knit-to-shape components that meet the production requirements set forth in paragraph (b)(1) or (b)(2).

3. Paragraph (b)(3)(A)(i) was amended by replacing the words “in the 1-year period beginning on October 1, 2000, and in each of the seven succeeding 1-year periods” with

the words “in the 1-year period beginning October 1, 2003, and in each of the 11 succeeding 1-year periods.” Paragraph (b)(3)(A)(ii) was amended by increasing the “applicable percentage” used for determining the quantitative limits that apply to apparel articles under this paragraph. Neither of these changes affects the AGOA implementing regulations.

4. The article description in paragraph (b)(3)(B) [now paragraph (c)(1)] , which sets forth a special rule for lesser developed beneficiary sub-Saharan African countries, was amended by extending the applicability of the rule through September 30, 2007, and by establishing a separate “applicable percentage” for use in determining the quantitative limits that apply to apparel articles subject to this special rule. The articles described in paragraph (b)(3)(B) [now paragraph (c)(1)] previously were subject to the “applicable percentage” set forth in paragraph (b)(3)(A)(ii). Neither of these changes affects the AGOA implementing regulations.

5. The article description in paragraph (b)(5)(A) was amended by removing the words “from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country.” As a result of this change, apparel articles of fabric or yarn that was formed in the United States or a beneficiary sub-Saharan African country will not be precluded from receiving preferential treatment under this paragraph, assuming all applicable production requirements are met.

6. The article description in paragraph (b)(6) was amended by adding a reference to “ethnic printed fabric” and by including a description of the “ethnic printed fabrics” that qualify for preferential treatment under this paragraph.

7. The article description in paragraph (b)(7) was amended by adding a reference to “or former beneficiary sub-Saharan African countries” after the words “and one or more beneficiary sub-Saharan African countries” each place they appear. This change would

permit the cutting and knitting-to-shape of fabric components to be performed in former beneficiary sub-Saharan African countries (if any).

Section 7(e)(1) of the Act of 2004 amended section 112(d) of the AGOA (codified at 19 U.S.C. 3721(d)), which sets forth certain special rules regarding the preferential treatment of eligible textile and apparel articles, by adding a new paragraph (d)(3) entitled “Certain components.” This new rule provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for such treatment because the article contains certain specified components that do not meet the requirements set forth in the applicable paragraph under section 112(b), regardless of the country of origin of the component.

Section 7(e)(2) of the Act of 2004 amended the de minimis rule in section 112(d)(2) by adding a reference to “or former beneficiary sub-Saharan African countries” after the words “beneficiary sub-Saharan African countries,” and by increasing the applicable de minimis percentage from 7 to 10 percent.

Finally, section 7(f) of the Act of 2004 amended section 112(e) of the AGOA (codified at 19 U.S.C. 3721(e)), by adding a definition of “Former sub-Saharan African country” in new paragraph (e)(4).

On September 7, 2004, the President signed Proclamation 7808 (published in the **Federal Register** on September 9, 2004, at 69 FR 54739) which, among other things, in Annex II set forth modifications to the HTSUS to implement the changes to sections 506A and 506B of the GSP statute and section 112 of the AGOA made by section 7 of the Act of 2004. The Proclamation provided that the HTSUS modifications that implement the changes made by section 7 of the Act of 2004 are effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 31, 2004.

As described above, the Act of 2004 made various technical amendments to the GSP statute as well as the AGOA which require amendments to the GSP and AGOA implementing regulations. Because these regulatory changes are not interpretative in nature but closely reflect the language of the statute, they are included in this final rule without need for comment.

Africa Investment Incentive Act of 2006

On December 20, 2006, the President signed into law the Tax Relief and Health Care Act of 2006 (Act of 2006), Public Law 109-432, 120 Stat. 2922. Title VI of the Act of 2006 is referred to as the “Africa Investment Incentive Act of 2006”. Section 6002 of the Act of 2006 amended section 112 of the AGOA (19 U.S.C. 3721) by transferring the existing special rule for lesser developed beneficiary sub-Saharan African countries from paragraph (b)(3)(B) of section 112 to new paragraph (c) of section 112, by extending the applicability of the rule through September 30, 2012, and by revising the “applicable percentage” for use in determining the quantitative limits that apply to apparel articles subject to this special rule. None of these changes affects the AGOA implementing regulations.

Section 6002 of the Act of 2006 further amended section 112 of the AGOA by adding a new paragraph (b)(8) to create a new category of textile and textile articles to which preferential treatment applies under the AGOA. This new paragraph encompasses textile and textile articles classifiable under Chapters 50 through 60 or Chapter 63 of the HTSUS that are products of a lesser developed beneficiary sub-Saharan African country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more of such countries. The changes to the AGOA implementing regulations necessitated by this statutory change are not interpretative in nature but closely

reflect the language of the statute. Therefore, these regulatory changes are included in this final rule without need for comment.

On March 19, 2007, the President signed Proclamation 8114 (published in the **Federal Register** on March 22, 2007 (72 FR 13655)) which, in Annex II, set forth modifications to the HTSUS to implement the changes to section 112 of the AGOA made by section 6002 of the Act of 2006. The HTSUS provisions proclaimed in Proclamation 8114 were modified by Proclamation 8157 of June 28, 2007 (72 FR 35895), and Proclamation 8240 of April 17, 2008 (73 FR 21515) to provide the tariff treatment authorized by the Act of 2006. The HTSUS provisions were further modified by Proclamation 8323 of November 25, 2008 to implement the changes to section 112(c) of the AGOA made by section 3 of the Extension of Andean Trade Preference Act, Public Law 110-436, 122 Stat. 4976.

Current AGOA Statutory Trade Benefit Provisions

Sections 111, 112 and 113 of Subtitle B of Title I of the Trade and Development Act of 2000, including amendments to the AGOA trade benefit provisions made by section 3108(a) of the Trade Act of 2002 and section 7 of the AGOA Acceleration Act of 2004, provide as follows:

Section 111

Subsection (a) of section 111 of the Act of 2000 amended Title V of the Trade Act of 1974 (the GSP statute which previously consisted of sections 501-507, codified at 19 U.S.C. 2461-2467) by inserting after section 506 a new section 506A entitled “Designation of sub-Saharan African countries for certain benefits” and codified at 19 U.S.C. 2466a.

Subsection (a) of new section 506A authorizes the President, subject to referenced eligibility requirements and criteria, to designate a country listed in section 107 of the Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b).

This subsection (a) also requires that the President terminate a designation if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements for designation.

Subsection (b) of new section 506A concerns preferential tariff treatment for certain articles and consists of the following two paragraphs:

1. Paragraph (1) authorizes the President to provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) of the GSP statute that is the growth, product, or manufacture of a beneficiary sub-Saharan African country. A beneficiary sub-Saharan African country is a country listed in section 107 of the Act of 2000 that has been designated by the President as eligible under subsection (a) of new section 506A. The President is authorized to provide duty-free treatment for an article if, after receiving the advice of the International Trade Commission in accordance with section 503(e) of the GSP statute, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. The articles described in section 503(b)(1)(B) through (G) of the GSP statute are those that are normally excluded from duty-free treatment under the GSP and consist of the following:

- a. Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;
- b. Import-sensitive electronic articles;
- c. Import-sensitive steel articles;
- d. 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;

e. Import-sensitive semimanufactured and manufactured glass products; and

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

2. Paragraph (2), as amended by section 7(a)(2)(A) of the Act of 2004, provides that the duty-free treatment under paragraph (1) will apply to any article described in that paragraph that meets the requirements of section 503(a)(2) (that is, the basic GSP origin and related rules).

Paragraph (2) also makes application of those basic rules in this context subject to the following two additional rules:

a. If the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to that United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and

b. The cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries shall be applied in determining that percentage.

Thus, in order for an article described in paragraph (1) to receive duty-free treatment, that article must meet the basic origin and related rules that apply to all eligible articles from any GSP-eligible country, but subject to two additional rules. In other words, (1) 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; (2) the article must be imported directly from a beneficiary sub-Saharan African country into the customs territory of the United States; (3) 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 or former beneficiary sub-Saharan African countries; and (4) as variations from the general GSP 35 percent value-content rule (the two additional rules): the cumulation of the cost or value of materials from different beneficiary countries (or former beneficiary countries) is not dependent on those countries 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, 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.

Subsection (c) of new section 506A defines the terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" for purposes of the AGOA as a country or countries listed in section 107 of the Act that the President has determined is eligible under subsection (a) of new section 506A. In addition, pursuant to an amendment by section 7(a)(2)(B) of the Act of 2004, subsection (c) defines the term "former beneficiary sub-Saharan African country" as a country that, after being designated as a beneficiary sub-Saharan African Country under the AGOA, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.

Subsection (b) of section 111 of the Act of 2000 revised section 503(c)(2)(D) of the GSP statute in order to accommodate inclusion of a reference to “any beneficiary sub-Saharan African country.” The effect of this amendment is to preclude the withdrawal of GSP duty-free treatment from a beneficiary sub-Saharan African country by application of the GSP competitive need limitation provisions. This amendment is not addressed in the regulatory changes adopted as a final rule in this document.

Section 114 of the Act of 2000 also amended the GSP statute by inserting after new section 506A another new section 506B, codified at 19 U.S.C. 2466b and entitled “Termination of benefits for sub-Saharan African countries.” This new section, as amended by section 7(a)(1) of the Act of 2004, provides for the continuation of GSP duty-free treatment through September 30, 2015, in the case of a beneficiary sub-Saharan African country as defined in section 506A(c). The provisions of section 506B also are not addressed in the regulatory changes adopted as a final rule in this document.

Section 112

Section 112 of the Act of 2000 set forth rules that provide for the preferential treatment of certain textile and apparel products. These rules are codified at 19 U.S.C. 3721 and thus are outside the GSP statutory framework. Moreover, these rules in effect operate as an exception to the approach under the GSP because section 503(b)(1)(A) of the GSP statute excludes most textile and apparel articles from preferential (that is, duty-free) treatment under the GSP.

Subsection (a) of section 112 contains the basic preferential treatment statement. It provides that textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the GSP statute shall enter the United States free of duty and free

of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113 of the Act of 2000.

Subsection (b) of section 112 lists the specific textile and apparel products to which the preferential treatment described in subsection (a) applies. The textile and apparel products described in section 112(b), as amended by section 3108(a) of the Act of 2002, section 7(b), (c) and (d) of the Act of 2004, and section 6002 of the Act of 2006, are as follows:

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, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States (HTSUS) and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (b)(1)(A)];

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, or both (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 Chapter 61 or 62 of the HTSUS, if, after that 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 [paragraph (b)(1)(B)];

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 (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) [paragraph (b)(2)];

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 yarns originating in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in 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 in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both, whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (b)(1) or (b)(2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (b)(1) or (b)(2)), subject to the application of certain quantitative limits [paragraph (b)(3)];

5. Apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both, whether or not the apparel articles are also made from any of the fabrics,

fabric components formed, or components knit-to-shape described in paragraph (b)(1) or (b)(2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (b)(1) or (b)(2)), subject to the application of certain quantitative limits [paragraph (b)(3)];

6. Cashmere sweaters, that is, 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 [paragraph (b)(4)(A)];

7. Wool sweaters containing 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 [paragraph (b)(4)(B)];

8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the North American Free Trade Agreement (NAFTA). (This AGOA provision in effect applies to apparel articles that are entitled to preferential duty treatment under the NAFTA based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The subject fabrics and yarns include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts. See House Report 106-606, 106th Congress, 2d Session, at page 77.) [paragraph (b)(5)(A)];

9. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled

in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not described in paragraph (b)(5)(A), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (b)(5)(A) [paragraph (b)(5)(B)];

10. A handloomed, handmade, or folklore article or an ethnic printed fabric of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of the beneficiary country or countries, subject to a determination by the President regarding which, if any, particular textile and apparel goods of the country or countries will be treated as being handloomed, handmade, or folklore articles or an ethnic printed fabric [paragraph (b)(6)];

11. Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTSUS) [paragraph (b)(7)].

12. Textile and textile articles classifiable under Chapters 50 through 60 or Chapter 63 of the HTSUS that are products of a lesser developed beneficiary sub-Saharan African country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries [paragraph

(b)(8)]; and

13. 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 yarn used to make the articles, subject to the application of certain quantitative limits [paragraph (c)];

Subsection (d) of section 112 concerns the elimination of existing quotas on textile and apparel articles imported into the United States from Kenya and Mauritius. This provision is not addressed in the regulatory changes adopted as a final rule in this document.

Subsection (e) of section 112, as amended by section 7(e) of the Act of 2004, sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under section 112. These special rules are as follows:

1. Paragraph (e)(1)(A) sets forth a special rule regarding the treatment of findings and trimmings. It provides that 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 paragraph (e)(1)(A) general rule, paragraph (e)(1)(C) provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (b)(2) of section 112 (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of “foreign” origin).

2. Paragraph (e)(1)(B) sets forth a special rule regarding the treatment of 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. The paragraph also provides 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.

3. Paragraph (e)(2) sets forth 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 or former 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.

4. Paragraph (e)(3) sets forth a special rule regarding the treatment of certain specified components, namely collars and cuffs (cut or knit-to-shape), drawstrings, shoulder pads or other padding, waistbands, belt attached to the article, straps containing elastic, and elbow patches. Under this rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains a specified component that fails to meet the requirements set forth in section 112(b), regardless of the country of origin of the component.

Subsection (f) of section 112 defines certain terms for purposes of sections 112 and 113

of the Act of 2000 and, in paragraph (e)(2), states that the terms “beneficiary sub-Saharan African country” and “beneficiary sub-Saharan African countries” have the same meaning as those terms have under new section 506A(c) discussed above.

Finally, subsection (g) of section 112 provides that section 112 takes effect on October 1, 2000, and will remain in effect through September 30, 2015.

Section 113

Section 113 of the Act of 2000 sets forth standards and conditions for the designation of beneficiary sub-Saharan African countries and for the granting of preferential treatment to textile and apparel articles under section 112. These provisions are primarily intended to avoid transshipment situations and thus ensure that preferential treatment is applied to goods as intended by Congress.

Subsection (a) of section 113 sets forth various terms and conditions that a potential beneficiary sub-Saharan African country must satisfy for purposes of preferential treatment under section 112. These terms and conditions involve enforcement and related actions to be taken by, and within, those potential beneficiary sub-Saharan African countries and thus, except in the case of paragraphs (a)(1)(F) and (a)(2), do not relate to matters that require regulatory action by CBP. Paragraph (a)(1)(F) requires a country to agree to report, on a timely basis, at the request of the CBP, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system. For purposes of paragraph (a)(1)(F), paragraph (a)(2) states that documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the

exporter.

Subsection (b) of section 113 sets forth regulatory standards for purposes of preferential treatment under section 112, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each beneficiary sub-Saharan African country, prescribes a penalty that the President must impose on an exporter if the President determines that the exporter has engaged in transshipment, specifies when transshipment occurs for purposes of the subsection, and sets forth responsibilities of CBP regarding monitoring and reporting to Congress on actions taken by countries in sub-Saharan Africa. The specific provisions under subsection (b) that require regulatory action by CBP are the following:

1. Paragraph (b)(1)(A) provides that any importer that 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 pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (b)(1)(A) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to CBP on request, and (4) promptly 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.

2. Paragraph (b)(2) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (b)(1)(A) will not be required in the case of an

article imported under section 112 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.

Finally, subsection (c) of section 113 requires CBP to provide technical assistance to the beneficiary sub-Saharan African countries and to send production verification teams to at least four beneficiary sub-Saharan African countries each year, and subsection (d) of section 113 contains an appropriation authorization to carry out these duties. These provisions are not addressed in the regulatory changes adopted as a final rule in this document.

Interim Regulatory Amendments in T.D. 00-67

The interim amendments to the CBP regulations set forth in T.D. 00-67 to implement the trade benefit provisions of the Act of 2000 consisted of the following: (1) the addition of a new § 10.178a (19 CFR 10.178a) reflecting the non-textile duty-free treatment provisions of new section 506A of the GSP statute as added by section 111(a) of the Act of 2000; (2) the addition of new §§10.211 through 10.217 (19 CFR 10.211 through 10.217) to implement those textile and apparel preferential treatment provisions within sections 112 and 113 of the Act of 2000 that relate to U.S. import procedures; and (3) the addition of a reference in the list of entry records in the Appendix (the interim “(a)(1)(A) list”) to Part 163 (19 CFR Part 163) to cover AGOA textile documentation.

T.D. 00-67 also included a number of interim amendments to the existing CBP regulations concerning the Generalized System of Preferences (GSP) program (19 CFR 10.171-10.178) to implement previous statutory and other changes to that program and to correct several out-of date statutory references. The specific GSP regulations affected were §§ 10.171(a),

10.175(e), 10.176(a), and 10.176(c) (19 CFR 10.171(a), 10.175(e), 10.176(a), and 10.176(c)). For more detailed information concerning these regulatory changes, please see T.D. 00-67.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on October 1, 2000, T.D. 00-67 nevertheless provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on December 4, 2000. A discussion of the comments received by CBP is set forth below.

Interim Regulatory Amendments in T.D. 03-15

As a consequence of the statutory changes made by section 3108 of the Act of 2002 and the modifications to the HTSUS made by Proclamation 7626, T.D. 00-67 no longer fully reflected the state of the law. Accordingly, T.D. 03-15 set forth interim amendments involving the textile and apparel provisions in the AGOA and, in part, reflected changes made to those statutory provisions by section 3108 of the Act of 2002. The specific statutory changes addressed in T.D. 03-15 involved the amendment of several AGOA regulatory provisions to clarify the status of apparel articles assembled from knit-to-shape components, the inclusion of a specific reference to apparel articles formed on seamless knitting machines, a change of the wool fiber diameter specified in one provision and the addition of a new provision to cover additional production scenarios involving the United States and AGOA beneficiary countries. T.D. 03-15 also included a number of other changes to the AGOA implementing regulations to clarify a number of issues that arose after their original publication. For further details regarding these regulatory provisions, see T.D. 03-15.

The interim regulatory amendments promulgated by T.D. 03-15 became effective on March 21, 2003. However, public comments on the interim amendments were solicited, and a

discussion of the comments received during the comment period, which closed on May 20, 2003, is set forth below.

Regulatory Amendments to Reflect Changes Made by the Acts of 2004 and 2006

This final rule incorporates in the regulatory text statutory changes made to the AGOA by section 7 of the Act of 2004 (and the modifications to the HTSUS made by Proclamation 7808) and by section 6002 of the Act of 2006 (and the modifications to the HTSUS made by Proclamation 8114). As stated earlier, because these changes to the interim regulatory texts, as described below, are not interpretative in nature but closely reflect the language of the statute, they are included in this final rule without need for comment.

1. In § 10.178a, paragraphs (d)(2) and (d)(4)(ii) are revised to reflect the amendment to section 506A(b)(2)(B) of the GSP statute providing for the inclusion of the cost or value of materials produced in “former beneficiary sub-Saharan African countries” toward satisfying the GSP 35% value-content requirement.

2. In § 10.178a, a new paragraph (d)(5) is added to reflect the definition of “former beneficiary sub-Saharan African country” set forth in amended section 506A(c) of the GSP statute.

3. In § 10.212, a definition of “ethnic printed fabric” is added as new paragraph (d) to reflect the inclusion of references to, and description of, “ethnic printed fabric” in paragraph (b)(6) of section 112 of the AGOA.

4. In § 10.212, a definition of “former beneficiary country” is added as new paragraph (f) to reflect the inclusion of references to this term in paragraphs (b)(3), (b)(7) and (e)(2) of section 112 of the AGOA as well as the definition of this term set forth in new paragraph (f)(4) of section 112 of the AGOA.

5. In § 10.212, a definition of “lesser developed beneficiary country” is added as new paragraph (j) to reflect the inclusion of references to this term in paragraphs (b)(8) and (c) of section 112 of the AGOA.

6. In § 10.213, paragraphs (a)(1) and (a)(2) are revised to conform to the amendment of the product description in the introductory text of paragraph (b)(1) of section 112 of the AGOA.

7. In § 10.213, paragraph (a)(4) is revised to conform to the amendment of the product description in the introductory text of paragraph (b)(3) of section 112 of the AGOA.

8. In § 10.213, paragraph (a)(8) is revised to conform to the amendment of the product description in paragraph (b)(5)(A) of section 112 of the AGOA.

9. In § 10.213, paragraph (a)(10) is revised to conform to the amendment of the product description in paragraph (b)(6) of section 112 of the AGOA.

10. In § 10.213, paragraph (a)(11) is revised to conform to the amendment of the product description in paragraph (b)(7) of section 112 of the AGOA.

11. In § 10.213, a new paragraph (a)(12) is added to reflect the addition of paragraph (b)(8) to section 112 of the AGOA.

12. In § 10.213, the de minimis rule set forth in re-designated paragraph (c)(1)(iv) (formerly paragraph (b)(1)(iv)) is revised to conform to the amendments made to section 112(d)(2) of the AGOA (now section 112(e)(2)). An explanation for the re-designation of former paragraph (b) of the interim regulatory texts as paragraph (c) is set forth below in the discussion of comments in response to T.D. 00-67.

13. In § 10.213, re-designated paragraph (c) (formerly paragraph (b)), entitled “Special rules for certain component materials,” is revised by adding a new paragraph (c)(1)(v)

to reflect the inclusion of an additional special rule relating to certain specified components in new paragraph (d)(3) of section 112 of the AGOA (now section 112(e)(3)).

14. The preference group descriptions on the Certificate of Origin set forth under paragraph (b) of § 10.214 are revised to reflect the amended product descriptions in section 112(b) of the AGOA. The instructions for completion of the Certificate in paragraph (c) of § 10.214 are also revised as appropriate to reflect the changes made to the Certificate.

CBP is now publishing one document that (1) addresses both the comments submitted on the interim regulations published in T.D. 00-67 and T.D. 03-15, and (2) adopts, as a final rule, the AGOA implementing regulations contained in the two interim rule documents with changes reflecting the statutory amendments made by the Acts of 2004 and 2006 as well as other changes identified and discussed below.

Discussion of Comments in Response to T.D. 00-67

A total of 19 commenters responded to the solicitation of public comments in the October 5, 2000, interim rule document referred to above. One commenter addressed the interim conforming amendments to the GSP regulations, and the other 18 commenters made a variety of observations or suggestions regarding the interim AGOA implementing regulations.

It should be noted that the comments received in response to T.D. 00-67 were received prior to the subsequent statutory changes effected by section 3108 of the Act of 2002, the regulatory interim amendments made by T.D. 03-15, and the statutory changes effected by section 7 of the Act of 2004 and section 6002 of the Act of 2006. To the extent that the comments received were unaffected by these subsequent changes, CBP has responded.

I. Conforming GSP Regulations Changes

Comment:

The comment on the interim conforming amendments to the existing GSP regulations concerned specifically the revision of paragraph (a) of § 10.176. This commenter asserted that, in view of the decision in Uniden America Corp. v. United States, 120 F.Supp. 2d 1091, 24 CIT 1191 (2000), revised § 10.176(a) does not adequately implement the changes made to the GSP statute by section 226 of the Customs and Trade Act of 1990 in two respects. First, the revised regulation should provide that the “substantial transformation” test applies to the “eligible article” rather than each of its detachable elements. Second, the revised regulation should clarify that “simple combining or packaging operations” do not include complex manufacturing operations that also involve the combining or packaging of foreign components.

CBP’s Response:

The commenter seeks a change to revised § 10.176(a) based on the decision in Uniden, rather than the language of section 226 of the Customs and Trade Act of 1990. In Uniden, the Court of International Trade determined that a cordless phone assembled in a GSP eligible country and packaged with an A/C adapter imported from a non-GSP eligible country was a product of the GSP eligible country and entitled to GSP preferential tariff treatment when imported into the United States.

CBP does not agree that the changes to revised § 10.176(a) suggested by the commenter should be implemented as part of this final rule document. Section 226 of the Customs and Trade Act of 1990 (Public Law 101-382, 104 Stat. 660) amended the GSP statute (19 U.S.C. 2463) to include explicit country of origin language nearly identical to that found in the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2703). As the legislative history of section 226 indicates that the GSP and CBERA “growth, product or manufacture” requirements should be applied identically (see House Report 101-650, 101st Congress, 2d

Session, at page 137), revised § 10.176(a) was drafted to closely follow the corresponding CBERA regulatory provision (19 CFR 10.195(a)). Consistent with this legislative intent, CBP believes that it would be inappropriate to alter §10.176(a) in the manner suggested by the commenter. .

II. AGOA Implementing Regulations

All of the comments received on the interim AGOA implementing regulations were directed to the textile and apparel provisions of sections 112 and 113 of the AGOA, and thus there were no comments pertaining to the expanded GSP provisions contained in section 111 of the AGOA. The comments submitted by these 18 commenters are summarized and responded to below.

General Comments Regarding Scope of Intended Benefits

Four commenters expressed views regarding the scope of the AGOA, particularly in regard to its intended beneficiaries.

Comment:

Three commenters asserted that because the Congressional intent behind the AGOA was to encourage two-way trade between the United States and the countries of sub-Saharan Africa with no other third country participation, CBP must bar preferential entry of any merchandise under the AGOA that has undergone any processing or been advanced in value or improved in condition in any way other than in the United States or a designated beneficiary country, except for one specific provision involving lesser developed beneficiary countries. Accordingly, these commenters stated that CBP must ensure that the final regulations maximize trade benefits to the beneficiary countries and to producers in the United States.

CBP's Response:

CBP agrees that the AGOA was intended to promote the creation of a climate conducive to greater levels of trade and investment and to foster a growing economic partnership between the United States and sub-Saharan African countries (see the discussion of the beneficiary country eligibility criteria in the Conference Report relating to the Act of 2000, House Report 106-606, 106th Congress, 2d Session, at p. 68).

CBP also agrees that under the statutory scheme, the processing of textile and apparel articles entitled to preferential treatment under the AGOA is specified to occur either in the United States or in the AGOA beneficiary countries (and in certain instances, in former beneficiary countries, if any), except as regards the sourcing of fabric or yarn in the case of certain lesser developed beneficiary countries. In addition, the direct importation requirement set forth in the statute and regulations operates as a practical matter to limit the feasibility of operations in countries other than the United States or AGOA beneficiary countries.

Comment:

One commenter complained that the AGOA textile and clothing provisions substantially dilute the benefits of the NAFTA for Canadian textile producers and their United States customers and suppliers. This commenter noted in this regard that the AGOA provisions impair the ability of United States fabric and apparel producers to source yarns and fabrics from all the available competitive suppliers in the NAFTA region, because they are limited to buying from United States suppliers. The commenter argued that this runs contrary to the textile/apparel infrastructure that has emerged under the NAFTA. Another commenter expressed regret that Canadian and NAFTA yarns and fabrics are excluded from eligibility under the AGOA.

CBP's Response:

Although CBP agrees that the provisions provide limited benefits to Canadian textile

producers, CBP believes this to be consistent with the language and intent of the legislation. The intent of the legislation was to foster increased opportunities for the United States and countries in the sub-Saharan African region. Thus, where the legislation requires that yarns and fabric for certain apparel articles be wholly formed in the United States, it does not allow for the sourcing of yarns and fabric from other NAFTA countries. CBP notes that the “wholly formed” requirement would not preclude the sourcing of fibers from NAFTA countries (or any other countries) so long as those fibers are spun into yarns and used to form qualifying fabric in the United States.

Definition of “Apparel Articles”

Comment:

One commenter stated that within the § 10.212 definition of “apparel articles” the reference to HTSUS subheading “6406.99” is incorrect because that subheading includes rubber/plastic footwear parts. This commenter suggested that the correct reference should be to subheading “6406.99.15.”

CBP’s Response:

CBP agrees with the commenter that the reference to HTSUS subheading 6406.99 is incorrect. In 2000, the reference should have been to subheading 6406.99.15 so as to limit the articles to those made of textile materials. In 2012, the subheading was changed from 6406.99.15, HTSUS to 6406.90.15, HTSUS. Since the definition of “apparel articles” in § 10.212 was directed to textile apparel articles, the reference to subheading 6406.99 in this definition (now § 10.212(a)) has been replaced in this final rule document by a reference to subheading 6406.90.15, HTSUS.

Definitions of “Knit-To-Shape” and “Major Parts”

Comment:

One commenter noted with regard to § 10.212 that definitions of “knit-to-shape” and “major parts” already appear in § 102.21 of the CBP regulations (19 CFR 102.21). The commenter argued that those definitions should not be repeated in § 10.212 because meanings are presumed to be consistent throughout the regulations.

CBP’s Response:

CBP does not agree with this commenter. While there may be cases in which definitions or meanings might have broad regulatory application (see, for example, § 101.1 of the CBP regulations (19 CFR 101.1) which sets forth various definitions that generally apply throughout the CBP regulations), no presumption of consistency can operate where, as in the case of both §§ 10.212 and 102.21, the introductory text of the definitions provision expressly limits application of the definitions to the specific regulatory context in which the definitions appear. CBP also believes that, for the convenience of the reader, it is generally preferable for a regulatory text to repeat a text that is the same as one used in another regulatory context rather than to use a cross-reference to that other text, particularly when repeating the text will not add significant length to the regulations as a whole.

Meaning of “Wholly Assembled”

Comment:

One commenter took issue with what it believes is an assumption or interpretation of CBP that the words “wholly assembled” in the regulatory texts would preclude partial assembly in the United States. This commenter argued that Congress neither intended to penalize goods

that include value added in the United States nor wanted to discourage apparel companies from maximizing the use of U.S. inputs involving partial assembly in the United States.

CBP's Response:

CBP disagrees with the commenter's view of the intent of Congress. Certain of the categories of textile and apparel products entitled to preferential treatment under the AGOA specify that the affected articles must be "sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries." See, for example, section 112(b)(1) and (b)(2) of the AGOA. [It is noted that the words "sewn or otherwise" were added to these provisions by section 3108(a) of the Act of 2002.] However, section 112(b)(3) of the AGOA specifies that the affected apparel articles must be "wholly assembled in one or more beneficiary sub-Saharan African countries." CBP believes that adding the word "wholly" prior to "assembled" in the latter provision was purposeful and a clear indication of the intent of Congress that, as a prerequisite to receiving benefits under this provision, all assembly operations must be performed in one or more of the AGOA beneficiary countries. In provisions such as those cited above in which the word "assembled" is not prefaced by "wholly," CBP believes that Congress intended to permit prior partial assembly operations to be performed in the United States. The definitions of "sewn or otherwise assembled in one or more beneficiary countries" and "wholly assembled in" in § 10.212 of the regulations give effect to this intent.

Definition of "Wholly Formed"

Fourteen commenters submitted observations on the § 10.212 definition of "wholly formed" which was drafted with reference to yarns, thread and fabric.

Comment:

Two commenters indicated that the reference to “thread” in the definition was inappropriate because the word “wholly” does not appear in the statute in the context of thread formation. Rather, these commenters noted that the statute merely refers to “thread formed in the United States.” They therefore suggested that the definition be amended to ensure consistency with the wording of the statute.

CBP’s Response:

CBP agrees. In this regard, it is noted that in T.D. 03-15, CBP replaced the original interim § 10.212 definition of “wholly formed” with two definitions, one covering “wholly formed” as it relates to fabrics and the other covering “wholly formed” as it relates to yarns (see the comment discussion relating to wholly formed yarns below). This was done to reflect the separate fabric and yarn contexts under the statute. The separate definition for wholly formed yarns was further revised by removing the words “or thread” to reflect the fact that, as the commenters correctly point out, the statute does not use the word “wholly” in the context of thread formation.

Wholly Formed Fabrics

Comment:

With regard to fabrics, eight commenters expressed the view that the concept of “wholly formed” encompasses dyeing, printing and finishing operations and that, consequently, any requirement that a fabric be “wholly formed in the United States” means that any dyeing, printing or finishing of the fabric also must be performed in the United States. Some of the commenters further recommended that the regulatory texts be modified to clearly reflect this principle or to set forth all processing steps necessary to result in “wholly formed” fabric.

Six commenters took the position that dyeing, printing and finishing operations do not

fall within the concept of “wholly formed” and that, consequently, a requirement that a fabric be “wholly formed in the United States” does not mean that any dyeing, printing or finishing of the fabric must be restricted to the United States. Some of the commenters further recommended that the regulatory texts be modified to clearly reflect the principle that U.S. fabric may be dyed and finished outside the United States.

CBP’s Response:

The comments regarding the meaning of “wholly formed” as it applies to fabric fall on both sides of the issue of whether dyeing, printing and/or finishing should be included within the scope of the term. Some argue strenuously that dyeing, printing and/or finishing must be encompassed within the definition of “wholly formed”, while others argue just as strenuously that these processes clearly are not part of fabric formation. Both sides argue that their view reflects the intent of Congress.

CBP agrees with the latter position. “Form” refers to shape, being, existence. “Wholly” refers to completeness. Fabric is completely shaped, or wholly formed, prior to finishing. CBP disagrees with those who argue that any definition of “wholly formed” that does not include dyeing, printing and finishing would render the term “wholly” meaningless. It has meaning as it applies to the term “formed;” that is, it refers to all of the processes that contribute to the formation of the fabric. See also the response to the next comment.

Comment:

CBP is correct in interpreting that dyeing, printing and similar finishing operations may be performed on fabrics in the United States or in the beneficiary country. Consistent with the Breaux-Cardin rules, CBP has not included such dyeing, printing and finishing operations (or similar procedures) in the definition of operations that occur under the term “wholly formed.”

As a result, the interim regulations do not prohibit such dyeing and finishing operations from being performed in beneficiary countries.

CBP's Response:

CBP believes it would be inconsistent with the plain language of the AGOA to conclude that printing and/or dyeing is part of the fabric formation process. In drafting the interim regulations, CBP crafted a definition of “wholly formed” which was based in part on the definition of “fabric-making process” contained in § 102.21(b)(2) of the CBP regulations (19 CFR 102.21(b)(2)) and which was also intended to reflect the common meanings of the words “wholly” and “formed.” “Form” is defined, in part, in Webster's Third New International Dictionary (1993), at 893, as: “1a. to give form or shape to: . . . 2.a. to give a particular shape to: shape, mold, or fashion into a certain state or condition or after a particular model.” “Wholly” is defined in Webster's Third New International Dictionary (1993), at 2612, as: “1. To the full or entire extent: without limitation or diminution or reduction : ALTOGETHER, COMPLETELY, TOTALLY. 2. to the exclusion of other things: solely.” Similar definitions of both terms may be found in various lexicographic sources.

“Finishing” is defined in Webster's Third New International Dictionary (1993), at 854, as: “the act or process of completing: the final work upon or ornamentation of a thing. specif: the processing applied to cloth after it is taken from the loom.” Fairchild's Dictionary of Textiles, (7th ed. 1996), at 220, defines finishing as a “[s]equence of treatments (excluding coloration) worked on greige fabric intended for sale to consumers or downstream users prior to that sale.” In the 6th edition of Fairchild's Dictionary of Textiles, (1979), at 238, “finishing” is defined as: “[a] process through which fabric passes after being removed from the loom. (1) To improve appearance. . . . (2) To affect stiffness, weight, elasticity, softness. . . . (3) To facilitate

care. . . . (4) To protect the wearer. . . .” In the Dictionary of Fiber & Textile Technology (KoSa, 1999), at 86, “finishing” is defined as: “All the processes through which fabric is passed after bleaching, dyeing, or printing in preparation for the market or use. Finishing includes such operations as heat-setting, napping, embossing, pressing, calendering, and the application of chemicals that change the character of the fabric. The term finishing is also sometimes used to refer collectively to all processing operations above, including bleaching, dyeing, printing, etc.” In Fairchild’s Dictionary of Textiles (Second printing, 1970), at 230, “finishing” is defined as: “All processes through which fabric passes after being taken from loom. This covers bleaching, dyeing, sizing, and processes which give the desired surface effect, e.g., napping, calendering, embossing, etc. . . .” CBP’s review of the above definitions reveals that the definition of “finishing” found in the cited technical sources is consistent with the common meaning of the term as defined in general lexicographic sources. Thus, “finishing” in regard to fabric has been understood in the textile industry, as reflected by the various definitions cited above, as referring to processes which occur to fabric after it has been formed.

Absent evidence of a different commercial meaning or a legislative intent to the contrary, the terms of a tariff statute are to be given their common meaning. Based on the common meaning of the terms “wholly” and “formed,” the position of CBP is that dyeing, printing and finishing of fabric are not part of the fabric formation process and thus do not fall within the scope of “wholly formed” as it relates to fabric.

As to the reference in the comment to the Breaux-Cardin rules (the textile and apparel country of origin rules set forth in section 334 of the Uruguay Round Agreements Act (URAA), and implemented in § 102.21 of the CBP regulations (19 CFR 102.21)), CBP notes that the AGOA is a preferential tariff treatment program which is based, for textile apparel, upon

specified manufacturing processes; it is not a program based upon origin.

Comment:

Processes such as bleaching, dyeing and printing that are commonly recognized as “finishing operations” are separate from the forming of the materials and it is therefore appropriate that those processes should not affect the definition of “wholly formed.” The final rule should clarify the distinction between formation and finishing.

CBP’s Response:

Based on the definitions cited above in this comment discussion, CBP agrees with the comment, including the suggestion that the final regulations should contain a clarification regarding the fact that the processes of dyeing, printing and finishing are distinct from fabric formation. See the description of the regulatory text changes at the end of this wholly formed fabric comment discussion.

Comment:

In the terminology of the textile industry, “finishing” is necessary before fabric can be used, and without it the fabric is “unfinished,” the opposite of “wholly formed.” Apparel is not made of “unfinished” fabric, and “unfinished” cannot be stretched to mean “complete,” “entire” or “whole.”

CBP’s Response:

CBP disagrees with this comment. As already stated, CBP believes that finishing and formation are separate processes. “Unfinished” is not the opposite of “wholly formed,” and CBP also notes that unfinished fabric is still fabric. The statute requires formation of fabric. Based upon the language of the statute and the common meaning of the terms chosen by Congress to express its intent in the statute, “wholly formed” as used in the AGOA speaks to formation of

fabric and does not include finishing.

Comment:

The common definition of “formed” as it relates to fabric is that once the yarn is spun and fabric is woven or knit, it is considered formed. Printing, dyeing and finishing (or similar processes) are irrelevant and not essential to the fabric formation process and thus should be allowable operations in the United States and/or beneficiary countries. It should be made clear that one can export greige fabric to the AGOA beneficiary country and then dye, cut and assemble there.

CBP’s Response:

Based on the definitions cited earlier in this wholly formed fabric comment discussion, CBP agrees that printing, dyeing and finishing are not part of the fabric formation process. CBP also agrees that dyeing, printing and finishing operations may occur in the United States or in the AGOA beneficiary countries except in the case of provisions subject to the restrictions under subheading 9802.00.80, HTSUS.

Comment:

The plain meaning of the term “wholly formed” when applied to fabric refers not only to the basic greige goods but also to any dyeing, printing and other finishing operations prior to cutting of the apparel components, since otherwise the word “wholly” would be essentially meaningless.

CBP’s Response:

As discussed above, “wholly” has meaning as it applies to “formed.” Congress is presumed to use words according to their common, ordinary meaning in drafting legislation unless some other intent is evident. Nothing in the AGOA or in the Conference Report relating

to the Act leads CBP to believe that Congress intended a meaning other than the plain meaning of the words “wholly” and “formed.” Therefore, based on the common meanings of “wholly” and “formed,” CBP disagrees with the commenter's assertion that “wholly formed” as it refers to fabric includes dyeing, printing and finishing operations.

Comment:

If Congress had intended to limit the phrase “wholly formed” to the formation of the greige goods, there would have been no need to include the word “wholly” in the statute. There is no circumstance in which greige goods may be “partially” formed in one country and “partially” formed in another country. Since language in a statute must be read to give effect to all of its terms, the use of the word “wholly” was evidently intended to reference dyeing, printing and finishing operations.

CBP's Response:

As already discussed above, “wholly” is an adverb that applies to “formed.” An examination of the common meanings of the terms, which Congress is presumed to have intended, leads to the conclusion that “wholly formed” as it pertains to fabric means the fabric is completely shaped or formed. CBP is giving effect to all the terms of the statute according to their context. Although CBP agrees with the commenter's assertion that ordinarily greige fabric is not “partially” formed in one country and “partially” formed in another country, CBP disagrees with the commenter's underlying premise that fabric cannot be “wholly formed” in the greige state.

Comment:

In sections 112(b)(1) and (b)(2) of the AGOA, “wholly” means fabrics which have been processed up to the point at which they are ready to be transformed into a new and different

article of commerce, that is, apparel. Before fabric can be transformed into apparel through cutting and assembly, it must first be scoured and bleached or dyed or printed and finished. Therefore, “fabrics wholly formed” means fabrics which have been formed from their constituent yarns by knitting, weaving, etc. and subsequently scoured or bleached or dyed or printed and finished in the United States only (the word “wholly” makes it clear that none of these processes may be carried out on the fabric in any other country).

CBP’s Response:

This comment asserts that dyeing, printing and finishing must be within the meaning of “fabrics wholly formed” without offering support for the assertion other than an argument that such processing must occur before fabric is cut and assembled into apparel. Although fabric is normally dyed or printed and finished before being cut and assembled into goods, that is not always the case. Some garments are garment-dyed, a process recognized by Congress in section 112(b)(1)(B) of the AGOA which requires apparel to be assembled in one or more AGOA beneficiary countries from “fabrics wholly formed” and cut in the United States. If “fabrics wholly formed” meant that a greige fabric could not be “wholly formed” and that to be “wholly formed” a fabric had to be dyed or printed and finished in the United States, it would be incongruous for Congress to provide for garment-dyeing in the beneficiary countries in section 112(b)(1)(B) of the AGOA as it did. CBP is not persuaded by this comment and for reasons already stated maintains that dyeing, printing and finishing are operations separate and apart from the formation of fabric and thus do not fall within the scope of “wholly formed” as it pertains to fabric.

Comment:

Longstanding practice has made a distinction between “formed” (that is, knitted, woven, tufted, etc.) and “wholly formed” (meaning formed and subject to further processing to complete its identity, that is, preparation, dyeing or printing, and finishing). Congress clearly intended to make this distinction in the AGOA.

CBP’s Response:

CBP disagrees with the assertion made in the comment which is offered without support. The term “wholly formed” appears in subheading 9802.00.90, HTSUS, which is the provision created under the NAFTA to succeed the Special Regime program and which covers textile and apparel goods assembled in Mexico from fabric components wholly formed and cut in the United States. The term “wholly formed” has been interpreted by CBP in numerous rulings under this provision as referring to fabric that is woven or milled in the United States. See, for example, HQ 558708 of June 14, 1995, and HQ 559411 of April 7, 1997. The assertion of a “longstanding practice” is refuted by these rulings.

Comment:

In order to be consistent with the Special Access Program, as Congress intended, CBP must define the “forming” of fabric in the AGOA regulations to include the processes of dyeing, printing and finishing in addition to the processes of weaving and knitting. The Special Access Program clearly applies to goods that only undergo the overseas process of assembly and do not undergo other fabrication processes overseas, including dyeing, printing and finishing in the beneficiary country. Manifestly, fabric components exported from the United States under the Special Access Program could only be “in condition ready for assembly with no further fabrication” if one of the two exclusive steps undertaken before export from the United States (that is, “forming” and “cutting” the fabric) included the processes of dyeing, printing and

finishing, and those processes would most sensibly be placed within the category of fabric formation.

CBP's Response:

CBP agrees that Congress wanted the AGOA to be administered in a manner similar to the way in which the Special Access program is administered. This desire is evident in the Conference Report relating to the Act of 2000. However, CBP finds nothing in the **Federal Register** notices regarding that program or in the language of the tariff provision providing for implementation of the program which supports the argument that “wholly formed” in reference to fabric requires the inclusion of finishing operations. In fact, notices regarding the Special Access program support the opposite conclusion. In the initial notice announcing the implementation of the Special Access program, published in the **Federal Register** (51 FR 21208) on June 11, 1986, the Committee for the Implementation of Textile Agreements (CITA) referred to the requirement that fabric be “entirely U.S. formed” or “entirely formed in the United States.” In discussing this requirement, the notice stated that “[f]abric which . . . would have to be labeled ‘Imported cloth, finished in the USA’ or ‘Made in (foreign country), finished in USA’ does not qualify as U.S. formed and cut fabric. . . .” A later notice by CITA to clarify requirements and procedures for the Special Access program, published in the **Federal Register** (52 FR 26057) on July 10, 1987, stated the following in regard to the definition of U.S.-formed and cut parts: (1) greige goods imported into the United States and then finished in the United States do not qualify under the program because that fabric is foreign-formed; and (2) fabric that is woven or knitted in the United States from foreign yarn is considered U.S.-formed for the purposes of this program. Similar language is found in the notice announcing the requirements for participation in the Special Regime program, published in the **Federal Register** (53 FR

15724) on May 3, 1988, which stated that greige goods imported into the United States and then finished in the United States do not qualify under the Special Regime program because that fabric is foreign-formed.

Thus, CITA recognized a distinction between fabric formation and fabric finishing and viewed dyeing and printing as being in the latter category. There is no discussion of finishing of fabrics as being considered part of fabric formation in the notices regarding the Special Access and Special Regime programs.

Comment:

In order to qualify under section 112(b)(1) of the AGOA, the apparel articles must be either “entered under subheading 9802.00.80” or “qualified for entry” under that subheading but for the fact of certain operations performed on the assembled articles, and, in order to qualify under subheading 9802.00.80, the components exported to the foreign country must be “ready for assembly without further fabrication.” This means that in order to qualify under subheading 9802.00.80, neither the fabric nor the fabric components could be sent to the foreign country and subjected to operations such as dyeing, printing and other finishing operations (in other words, any operations such as dyeing, printing and other finishing operations must be done in the United States prior to the export of the fabric components).

CBP’s Response:

CBP agrees that fabric formed and cut in the United States and used in the assembly of apparel articles described in § 10.213(a)(1) and (a)(2) (which corresponds to § 112(b)(1) of the Act) cannot be subject to dyeing, printing or most other finishing operations in an AGOA beneficiary country. The apparel described in § 10.213(a)(1) is entered under subheading 9802.00.80, HTSUS, which precludes processing of the U.S. components outside the United

States other than by assembly operations or operations incidental to assembly. The apparel described in § 10.213(a)(2) are goods which would have qualified for entry under subheading 9802.00.80, HTSUS, but for the performance of certain enumerated operations. The regulations implementing subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.16(c) which delineates what will not be considered “incidental” to assembly), preclude bleaching, dyeing and similar processing of the fabric components abroad. However, there is no requirement that these processes be performed in the United States prior to the foreign assembly. Thus, for instance, a U.S. importer wishing to garment dye his goods in the United States after assembly in an AGOA beneficiary country would be able to do so after entry of the assembled goods under subheading 9802.00.80, HTSUS.

Comment:

There are close parallels between the two special access rules contained in Appendix 2.4 of NAFTA Annex 300-B and the first two categories of goods afforded preferential treatment under the AGOA. As regards the second special access rule (which is implemented in HTSUS subheading 9802.00.90) and the second AGOA category, each contains the same two core requirements, that is, (1) that all the fabric components must be formed and cut in the United States and (2) that those fabric components must, by virtue solely of those forming and cutting processes, be in condition ready for assembly overseas (certain specified post-assembly dyeing and washing operations are permitted under each provision); thus, a “fabric component” is produced by the operations of forming and cutting, and only by those operations. However, in the case of the first special access rule and the first AGOA category (which are both covered by HTSUS subheading 9802.00.80 and thus include two identical core requirements, that is, that the components must be fabricated in the United States and must be exported in a condition ready

for assembly without further fabrication), the two core requirements could only be met if the fabric components were fully dyed, printed, and finished in the United States, because there is no provision for post-assembly dyeing, printing, and finishing overseas. Therefore, if the phrase “wholly formed and cut” in the AGOA does not include dyeing, printing and finishing operations, the first AGOA category would become meaningless because its terms could not be met as a technological matter.

CBP’s Response:

CBP disagrees with the premise of the argument in the comment that the limitations or requirements set forth in subheading 9802.00.80, HTSUS, and applicable to the goods described in § 10.213(a)(1) and (a)(2) (section 112(b)(1)(A) and (B) of the AGOA) impact upon the meaning of “wholly formed and cut” as used in the AGOA. The same terms, “wholly formed” and “cut,” appear in § 10.213(a)(3) (section 112(b)(2) of the AGOA), albeit in a different order but, in CBP’s view, with the same meaning. “Wholly formed” is used in all three paragraphs in regard to fabric. The limitations associated with subheading 9802.00.80, HTSUS, are clearly tied to section 112(b)(1)(A) and (B) of the AGOA because Congress specifically required, in the case of goods described in section 112(b)(1)(A) of the AGOA, that the goods be entered under subheading 9802.00.80, HTSUS, and, in the case of goods described in section 112(b)(1)(B) of the AGOA, that the goods would have qualified for entry under subheading 9802.00.80, HTSUS, but for the performance of certain enumerated operations. However, section 112(b)(2) of the AGOA, which requires the use of fabric “wholly formed” in the United States, contains no mention of subheading 9802.00.80, HTSUS. If CBP were to adopt the reasoning set forth in the comment, CBP would impose a restriction under section 112(b)(2) of the AGOA that Congress clearly intended to apply in the case of goods described in section 112(b)(1)(A) and (B) of the

AGOA but just as clearly did not include in section 112(b)(2) of the AGOA.

Comment:

Similar use of the word “wholly” is found in subheading 9802.00.90, HTSUS, which confers duty-free entry under the NAFTA for certain goods imported from Mexico, that is, textile and apparel goods “assembled in Mexico in which all fabric components were wholly formed and cut in the United States....” Clearly, the intent of Congress in that provision as well as in the AGOA was to go beyond those processes by which yarns are manufactured into fabric and to include fabric finishing operations in the United States.

CBP’s Response:

CBP disagrees that the words “assembled in Mexico in which all fabric components were wholly formed and cut in the United States” in subheading 9802.00.90, HTSUS, and CBP rulings construing that subheading support a conclusion that, for purposes of the AGOA, dyeing, printing and finishing operations must occur in the United States for fabric to be “wholly formed.” There is nothing in the language of subheading 9802.00.90, HTSUS, or in the rulings issued by CBP interpreting that provision that would compel that conclusion. On the contrary, subheading 9802.00.90, HTSUS, and § 10.213(a)(2) of the regulations (section 112(b)(1)(B) of the AGOA) expressly permit garment dyeing and other finishing operations after assembly. The inclusion of references to those post-assembly operations supports the conclusion that dyeing or finishing of fabric prior to cutting and exportation of the components for assembly is not required for the fabric to be “wholly formed.” In fact, a requirement to dye the fabric prior to exportation of the cut components would be counterproductive in the case of a producer planning to garment dye his apparel after assembly.

Comment:

Rulings issued by CBP construing HTSUS subheading 9802.00.90 support the conclusion that the references to fabrics “wholly formed” in the United States require that any dyeing, printing and other finishing operations prior to cutting take place in the United States rather than in the sub-Saharan African country or anywhere else.

CBP’s Response:

As already stated, CBP believes the rulings construing subheading 9802.00.90, HTSUS, support a conclusion opposite to the one asserted by this commenter. The terminology in subheading 9802.00.90, HTSUS, is different from that used in the various textile provisions of the AGOA. Although the term “wholly formed” appears in subheading 9802.00.90, HTSUS, and in the AGOA, in subheading 9802.00.90, HTSUS, it applies to “fabric components” whereas in the AGOA it is used with reference to “fabric” and “yarns.” In subheading 9802.00.90, fabric components which have been “wholly formed and cut” are exported to Mexico for assembly. The language of subheading 9802.00.90, HTSUS, imposes certain limitations on the processing that the fabric components may undergo in Mexico. These limitations include the requirement that the fabric components, in whole or in part, not be advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process. This is the limitation the commenter seeks to impose upon all apparel produced in accordance with those provisions of the AGOA that provide for the use of “fabric wholly formed” in the United States. However, no such limitation appears in, or applies under, the AGOA in section 112(b)(2) of the AGOA. In regard to section 112(b)(1) of the AGOA, because this provision specifically references subheading 9802.00.80, HTSUS, the restrictions set forth in subheading 9802.00.80, HTSUS, apply to the apparel articles described in this section. CBP previously addressed in this comment discussion the effect of referencing subheading

9802.00.80, HTSUS, in the AGOA texts.

As CBP has already noted in this comment discussion, the inclusion of references to post-assembly operations in subheading 9802.00.90, HTSUS, supports the conclusion that dyeing or finishing of fabric prior to cutting and exportation of the components for assembly is not required for the fabric to be “wholly formed” because a requirement to dye the fabric prior to exportation of the cut components would be counterproductive in the case of a producer planning to garment dye his apparel after assembly.

Comment:

The definition of “wholly formed” included in the interim regulations is fundamentally inadequate because it could be interpreted to limit this concept (in the case of fabrics) to the circumstance where a greige good is produced, without referencing the addition of any dyeing, printing and other finishing operations that take place before the fabric for the apparel is cut into the component parts. Accordingly, under section 112(b)(2) of the AGOA, the interim regulations could be interpreted to permit the AGOA preference to apply to apparel made from greige goods produced in the United States and subjected to dyeing, printing and other finishing operations in the beneficiary country. However, although section 112(b)(2) of the AGOA expressly permits the cutting of fabric in the beneficiary country, it does not permit additional operations such as dyeing, printing and finishing prior to the cutting of the fabric to be conducted in the beneficiary country (or anywhere else other than the United States).

CBP’s Response:

CBP disagrees with the underlying premise of this comment, that is, that “wholly formed” as it pertains to fabric includes dyeing, printing and finishing operations. The reasons for this CBP position have already been explained in this comment discussion. Additionally,

CBP disagrees with the assertion that cutting is the only operation that may be performed on fabric in the AGOA beneficiary countries under section 112(b)(2) of the AGOA because that provision only refers to cutting of fabric. Following that reasoning in the interpretation of the AGOA would mean that any operation not specifically mentioned in a provision simply could not occur either in the United States or in an AGOA beneficiary country. CBP believes that reasoning represents a restrictive approach in interpreting the AGOA provisions and was not intended by Congress in enacting trade preference provisions subject to express conditions. For example, the express conditions on preference that articles may not be advanced in value or improved in condition abroad other than by assembly or operations incidental to assembly (which Congress provided in subheading 9802.00.80, HTSUS, and incorporated by reference in certain provisions of the AGOA) would have been entirely unnecessary under the commenter's interpretive view.

Comment:

The references in the statute to “apparel articles assembled” and “apparel articles cut and assembled” in beneficiary countries means that no benefits are provided for or intended for operations other than assembly-related operations except when explicitly stated in the statutory provision.

CBP's Response:

CBP finds no basis within the language of the AGOA to conclude, as asserted by the above comment, that if an operation (that is, dyeing, printing or finishing) is not specified within the Act, then it must occur in the United States and may not occur in an AGOA beneficiary country. CBP finds no support for that conclusion in the language of the Act or in its legislative history. In the Statement of Policy in section 103 of the AGOA, Congress articulated the goals

or purpose behind this legislation. Among the goals, Congress stated its support for encouraging increased trade and investment between the United States and sub-Saharan Africa, reducing tariff and nontariff barriers and other obstacles to sub-Saharan African and United States trade, and strengthening and expanding the private sector in sub-Saharan Africa. A conclusion that silence regarding specific operations related to the production of apparel and the materials utilized in that production means that those operations must occur only in the United States is at odds with these stated goals.

Comment:

Congress in the first three categories of eligible goods took exquisite pains to specify, in positive, explicit language, the overseas operations that would qualify an apparel article for duty-free treatment: (1) the first category refers only to assembly abroad; (2) the second category refers only to assembly abroad plus ten carefully enumerated post-assembly dyeing and finishing operations; and (3) the third category refers only to two overseas operations, that is, cutting and assembly. Thus, any additional overseas operations, other than incidental, trivial ones, would disqualify the article. In carefully specifying cutting and assembly as the overseas processes in the third category, Congress could hardly have intended to allow those third category goods to undergo an entire set of additional overseas processes when Congress thought it was necessary to positively specify them in the second category as a predicate for duty-free eligibility.

CBP's Response:

As already pointed out in this comment discussion, the first and second categories of eligible goods are clearly tied to requirements set forth in subheading 9802.00.80, HTSUS. Congress chose not to impose these requirements in the third category of eligible goods. By choosing to draft the requirements for the third category of eligible goods differently from those

of the first and second categories, CBP understands that Congress deliberately intended different requirements to apply. The commenter asks CBP to impose on the third category of eligible goods restrictions taken from the first and second categories of eligible goods. As Congress did not impose those restrictions, neither can CBP.

Comment:

In the case of the third category of eligible goods, Congress could not, through its silence on the matter, have intended that preferential origin would be conferred on articles that underwent dyeing, bleaching, printing, finishing, etc., in beneficiary countries because this would be inconsistent with United States obligations as a party to the WTO Agreement on Rules of Origin. Annex II of that Agreement requires each party to the Agreement to precisely and positively specify the manufacturing or processing operations that confer preferential status.

CBP's Response:

CBP does not agree that interpreting “wholly formed” as not including dyeing, printing and finishing, thus allowing those processes to occur in the AGOA beneficiary countries, would violate United States obligations as a party to the World Trade Organization (WTO) Agreement on Rules of Origin. CBP first notes in this regard that since the AGOA provisions incorporate standards for a tariff preference rather than rules of origin, the WTO Agreement on Rules of Origin is not directly applicable to the AGOA. Moreover, even if the WTO Agreement on Rules of Origin were applicable in an AGOA context, CBP notes that the applicable provision referred to by the commenter requires that “in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers preferential origin shall be precisely specified.” Annex II, Clause 3, WTO Agreement on Rules of Origin. In the AGOA, Congress stated positively the operations necessary for preferential treatment. Clause 3, referenced by the

commenter, does not preclude additional operations from occurring or being allowed, but rather only provides that those additional operations must be specified in the preferential rule if they affect the determination of preferential origin.

Comment:

In referring in the AGOA to apparel assembled from “fabrics wholly formed and cut in the United States,” Congress mentioned only two steps, that is, forming and cutting. Since fabric finishing is an intermediate step between fabric formation and cutting, it cannot be a separate category but rather must be associated with one of the two statutory steps. Clearly, as between “wholly formed” and “cut,” “finished” belongs with the former.

CBP’s Response:

CBP rejects the premise of this comment that an operation which is not specified in the AGOA must be included with one that is specified. As stated above, Congress enumerated the required manufacturing processes and where those processes had to occur in order for apparel to qualify for preferential treatment under the AGOA. Any other processes not affecting eligibility under the AGOA need not be associated with a specified process as argued in the comment.

Comment:

Dyeing, printing and finishing operations must be performed on the fabric before it is cut into the shapes required by the particular apparel article to be produced. For both practical and aesthetic reasons, these operations cannot be performed on the apparel components after they are cut (in some cases, dyeing or printing is done on an apparel garment after it is assembled from the cut pieces, but those operations are exceptional and differ qualitatively from the dyeing, printing and other fabric finishing operations included within the concept of “wholly formed” fabric).

CBP's Response:

CBP agrees that dyeing, printing and finishing operations are normally performed on fabric before it is cut into components for assembly into garments. However, CBP disagrees with the suggestion made in the comment that the “concept of ‘wholly formed’ fabric” includes dyeing, printing and other fabric finishing operations. The reasons for CBP disagreement have been stated earlier in this comment discussion.

Comment:

Sections 112(b)(1) and (b)(2) of the AGOA should include fabric dyeing and finishing in the United States (and only in the United States). Dyeing and finishing processes are necessary to add color, chemical and physical properties to the fabrics prior to their being used in apparel and industrial products. Fabrics not dyed and finished are not yet ready to be components of the retail merchandise.

CBP's Response:

As stated above, CBP agrees that normally dyeing, printing and finishing operations are performed on fabric prior to cutting and assembly into garments. However, this is not always true as some garments are garment-dyed and some may be made of yarn-dyed fabric. For reasons already stated in this comment discussion, CBP disagrees with this commenter's suggestion that fabric dyeing and finishing should be included in section 112(b)(1) and (b)(2) of the AGOA.

Comment:

The words “or other process” in the definition of “wholly formed” as it applies to fabric, if interpreted narrowly to exclude dyeing, printing and finishing operations, would have the

consequence of conferring duty-free treatment on apparel articles that undergo in sub-Saharan Africa not only cutting and assembly but also any of the wide range of fabric dyeing, printing and finishing operations that transform fabric after the early stage processes (weaving, knitting, needling, etc.) that are performed in the United States. This result would be contrary to Congressional intent because Congress in the development of the AGOA deliberately chose not to aid the development of sub-Saharan African industry by sending offshore the intermediate and final value-adding processes (for example, bleaching, stone-washing, acid washing, dyeing, printing, embroidering) which are applied to greige fabric that is transformed into final textile articles or into apparel articles.

CBP's Response:

As already noted in an earlier comment response, Congress sought to promote the growth of trade and economic activity between the United States and sub-Saharan African countries. Congress specified the requirements for eligibility of goods and, in some cases, restrictions which Congress desired for certain categories of goods. CBP has found no support, nor was any provided by the commenter, for the argument that Congress deliberately chose not to send certain value-adding processes to offshore locations.

The phrase "or other process" within the definition of "wholly formed" as it pertains to fabric, relates to fabric formation processes that were not enumerated or that may have yet to be developed.

Comment:

Dyeing and finishing operations represent the largest part (that is, 70-75 percent) of the value added in a fabric and represent the most complicated part of the textile manufacturing process. Moreover, in terms of aesthetic value, printing adds on the order of 100 percent of

value based on creative effort and intellectual property considerations. It would be absurd to consider as “wholly formed” a product which lacks these value-added components.

CBP’s Response:

CBP does not dispute that dyeing, printing and finishing operations may be important in that they may add significantly to the value of fabric and contribute to the use of fabric. However, CBP finds no rationale for using a value-added measurement as a basis for including those operations within the scope of the term “wholly formed.” Based on the common meaning of the terms “wholly” and “formed” as discussed above, and in the absence of any language in the AGOA or its legislative history to support a contrary conclusion, the amount of value added by dyeing, printing or finishing operations (even when contrasted to the relatively lower percentage of cost attributable to labor) is entirely irrelevant in determining if fabric is “wholly formed.”

Comment:

The legislative history of the AGOA contains no indication that Congress intended to permit the large disruption to the U.S. textile industry that would result if dyeing, printing and other finishing operations could be performed in sub-Saharan African countries on greige good fabric.

CBP’s Response:

As already stated, CBP relies on the words Congress used in the statute and Congress is presumed to have used these words according to their common, ordinary meaning unless some other intent is evident. The legislative history of the AGOA contains no reference to precluding dyeing, printing and other finishing operations from occurring in the AGOA beneficiary countries. Moreover, the legislative history provides no reason for CBP to interpret the term

“wholly formed” other than according to its plain meaning.

Comment:

The current practice of permitting fabric finishing operations in the United States or the beneficiary countries greatly enhances the value of this program and thus the incentive to use U.S. fabric. Without this flexibility, U.S. fabric sales (from greige goods manufacturers) may be lost and trade may be diverted to lower cost Asian suppliers-an outcome that runs contrary to the spirit of the legislation.

CBP’s Response:

CBP first notes that the definition of “wholly formed” as it relates to fabric is predicated not on any potential impact on international trade patterns but rather only on the common meaning of the words chosen by Congress to express its intent in the AGOA. As already noted in this comment discussion, Congress intended benefits to accrue to the United States and the AGOA beneficiary countries by increasing trade and investment between the United States and sub-Saharan Africa countries and by reducing obstacles to trade between sub-Saharan African countries and the United States. Among its findings in section 102 of the AGOA, Congress found that “it is in the mutual interest of the United States and the countries of sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa” and that “encouraging the reciprocal reduction of trade and investment barriers in Africa will enhance the benefits of trade and investment for the region as well as enhance commercial and political ties between the United States and sub-Saharan Africa.” Based on these findings, CBP agrees with the basic point made in this comment. CBP further notes, however, that performing dyeing, printing and finishing operations on U.S.-formed fabric in countries other than the United States and AGOA beneficiary countries would be contrary to Congressional

intent reflected in sections 102 and 103 of the AGOA and thus should not be allowed.

Therefore, CBP believes that dyeing, printing and finishing operations performed on U.S.-formed fabric outside the United States should continue to be restricted in the regulatory texts to AGOA beneficiary countries — see the description of the regulatory text changes to 19 CFR 10.2013(b)(1) at the end of this wholly formed fabric comment discussion.

Comment:

It was the understanding of the dyeing and finishing industry and Congressional representatives and trade organizations that the AGOA legislation was intended to benefit not only sub-Saharan African countries but also producers of textile fabrics in the United States. If the legislation is now interpreted as to benefit only unfinished (versus wholly formed) fabrics, the results will be devastating to the U.S. dyeing and finishing industry which will fail to benefit from the AGOA and will suffer from yet another wave of imported products priced without the environmental and health and safety standards which the U.S. textile industry is proud to uphold.

CBP's Response:

CBP is not in a position to comment on “understandings” regarding this legislation prior to its passage. As stated above, CBP can only interpret the legislation based upon its words, Congressional intent as reflected by those words, and information contained in the Conference Report relating to the AGOA. With regard to the concern of this commenter and as already pointed out in this comment discussion, the reference in some provisions of section 112(b) of the AGOA to subheading 9802.00.80, HTSUS, means that in those cases fabric dyeing, printing and finishing processes, which are not assembly operations or (in most instances) operations incidental to assembly, must have taken place in the United States. Moreover, in regard to those other provisions of section 112(b) of the AGOA that refer to fabric “wholly formed” in the

United States, there is nothing in the Act that precludes that U.S.-formed fabric from also being dyed, printed and/or finished in the United States.

Comment:

The fact that the Breaux-Cardin rules of origin (section 334 of the Uruguay Round Agreements Act and § 102.21 of the CBP regulations) mandate that the spinning, knitting or weaving process is determinative of origin further supports the conclusion that printing or dyeing should not be viewed as relevant, much less essential, to the formation process.

CBP's Response:

Finishing, by definition, occurs to fabric after the fabric has been formed; after it has taken shape from weaving or knitting or other formation processes. A distinction between fabric formation and fabric finishing has existed in the realm of origin determinations for textile goods under the Customs laws and regulations for over 15 years, first by regulation (19 CFR 102.22) and then by statute (section 334 of the URAA, codified at 19 U.S.C. 3592). While CBP agrees with the commenter that the rules for determining the origin of textile goods offer support for the position that fabric formation and fabric finishing are distinct operations, as CBP has already noted above, the AGOA is a preferential trade program based on meeting the specified manufacturing process requirements set forth in the AGOA and is not a program based on origin.

Comment:

In the provision within the Act of 2000 that clarified section 334 of the Uruguay Round Agreements Act, Congress explicitly confirmed the interpretation that dyeing, printing and finishing are in fact “fabric-making processes,” just as weaving and knitting are fabric-making processes, for purposes of determining the country in which fabric is made, regardless of how many such operations will determine the country of origin of fabric for different purposes in

different specific statutes. CBP should follow this clarification in the AGOA definition text.

CBP's Response:

In this comment it is argued that Congress confirmed that dyeing, printing and finishing are “fabric-making processes.” However the provision referenced by the commenter does not say these processes are “fabric-making” but rather provides that they are origin conferring for certain fabrics. More specifically, section 334 of the URAA was amended by section 405 of the Act of 2000 so that it now provides in effect that dyeing and printing of certain fabrics, when accompanied by two or more other designated finishing operations, results in the fabric having its origin in the place where that processing occurred. CBP notes the amendment made by section 405 of the Act of 2000 addressed a specific dispute between the United States and the European Union concerning the effect of the URAA section 334 changes on United States obligations under a number of international agreements (see the Conference Report relating to the Act at page 118). Since the section 405 amendment relates to a context and a purpose that are entirely outside the scope of the AGOA (which is not a country of origin regime but rather is a preferential tariff treatment program), CBP believes that it has no bearing on the meaning of “wholly formed” as it relates to fabric under the AGOA.

Comment:

Processes such as dyeing, printing and finishing are treated in many statutes and regulations as fabric-making processes, that is, they are treated as the same type of processes as weaving and knitting because they are all processes in the “production” or “manufacture” of “fabric.” The regulatory provision on which the definition of “wholly formed” was based, that is, 19 CFR 102.21(b)(2), states that a “fabric-making process is any manufacturing operation that...results in a textile fabric.” United States laws and regulations include innumerable “textile

fabrics” that are the “result” of the operations of dyeing, printing and finishing and could not have been the “result” only of the operations of weaving and knitting. There is no warrant for treating the fabric-production processes of dyeing, printing and finishing any differently from the co-equal fabric-production processes of weaving and knitting.

CBP’s Response:

The commenter mischaracterizes the definition of a “fabric-making process” which appears in 19 CFR 102.21(b)(2). That regulation implements section 334 of the URAA which has been dealt with earlier in this comment discussion in the context of arguments for distinguishing between fabric formation and fabric finishing and for not including dyeing, printing and finishing operations within the scope of “wholly formed” as it relates to fabric.

Comment:

The Textile Fiber Products Identification Act makes perfectly clear (1) that the process of finishing a fabric is a fabric-making or fabrication process and (2) that both unfinished fabric and finished fabric are “fabric components.”

CBP’s Response:

CBP has frequently pointed out in its rulings, and the courts have held (see Sabritas S.A. de C.V. v. United States, 998 F. Supp. 1123 (CIT 1998)), that Congress did not intend CBP to be bound by another agency’s statutes and regulations in determining the meaning of tariff terms. Nevertheless, CBP notes that the Textile Fiber Products Identification Act (the TFPIA, 15 U.S.C. 70-70k) defines “fabric” as “any material woven, knitted, felted, or otherwise produced from, or in combination with, any natural or manufactured fiber, yarn or substitute therefor.” This definition of “fabric” is not substantially at variance with the definition CBP set forth in the interim regulations for “wholly formed” as it relates to fabric.

Comment:

In a colloquy with Senator Coverdell during Senate floor consideration of the Act of 2000, Senator Grassley affirmed that the intention of the managers was to permit dyeing and finishing operations in the United States or in beneficiary countries. In that colloquy, Senator Coverdell asked: “I have one final question regarding the so-called 809 provisions of both the Africa and Caribbean Basin measures. Am I correct that it is the managers’ intent that these provisions do not permit dying [sic] or finishing of the fabrics to be performed in countries other than the United States or the beneficiary countries?” Senator Grassley responded: “That is correct.”

CBP’s Response:

CBP does not find the colloquy to be dispositive for purposes of interpreting the statute and drafting the regulations. In regard to “wholly formed” as it pertains to fabric, the responses above justify not including dyeing, printing, and finishing operations in the definition of “wholly formed” in the interim regulations, as further clarified in this final rule document.

Comment:

The colloquy that took place on the floor of the Senate between Senators Grassley and Coverdell (reported at 146 Cong. Rec. at S3867, daily ed. May 11, 2000) regarding finishing operations in third countries is of essentially no value on the issue of whether Congress intended to permit dyeing, printing or finishing operations to take place in the beneficiary countries because the colloquy is ambiguous on this point, because the courts have held that the remarks of individual legislators made during a floor debate are not controlling in analyzing legislative history, and because there is some doubt as to whether the colloquy in fact took place prior to the

enactment of the legislation.

CBP's Response:

CBP believes that the response to the immediately preceding comment adequately addresses this comment.

Based on the comments received on the definition of “wholly formed” as it pertains to fabrics and the analysis of those comments set forth above, CBP in this final rule document has modified the interim § 10.212 definition of “wholly formed fabrics” to clarify that fabric formation does not encompass dyeing, printing and finishing operations.

In addition, a new paragraph (b) has been added to § 10.213 (with paragraphs (b) and (c) of the interim regulation consequently re-designated as (c) and (d)) which in subparagraph (1) clarifies that while dyeing, printing, and finishing operations are not part of the fabric or component (for example, a knit-to-shape component that is made directly from yarn) formation process, those dyeing, printing, and finishing operations are only permissible if performed in the United States or in the AGOA beneficiary countries. New paragraph (b)(1) also includes a caveat that any dyeing, printing, and finishing operations performed in an AGOA beneficiary country must be incidental to assembly in the case of articles described in paragraphs (a)(1) and (a)(2) of § 10.213 which are subject to the rules that apply under subheading 9802.00.80, HTSUS.

Wholly Formed Yarns

Unlike the comments regarding the dyeing, printing, and finishing of fabric discussed above, which were sharply divided on the question of whether those processes fall within the concept of “wholly formed” as it pertains to fabric, the comments received in regard to the definition of “wholly formed” as it pertains to yarn uniformly supported the conclusion that

dyeing and finishing operations are not part of the yarn formation process. Some of these commenters also suggested that the dyeing and finishing of yarns should be limited to the United States and AGOA beneficiary countries. A discussion of the specific points made by these commenters in support of those views is set forth below.

Comment:

With regard to yarns (other than thread), seven commenters took the position that dyeing and finishing operations do not fall within the concept of “wholly formed” and that, consequently, a requirement that a yarn be “wholly formed in the United States” does not mean that any dyeing or finishing of the yarn must be restricted to the United States. One of these commenters argued that allowing dyeing and finishing operations to be performed on U.S. yarns in the AGOA beneficiary countries is consistent with Congressional intent, noting in this regard that this issue was addressed in a colloquy between Senator Coverdell and Senator Grassley during Senate floor consideration of the Trade and Development Act of 2000. In that colloquy, Senator Coverdell asked: “When the Act requires yarn to be ‘wholly formed’ in the United States, am I correct that the intention of the managers is to require that all processes necessary to convert fibers into yarn--i.e., spinning, extruding--be performed in the United States?” In reply, Senator Grassley stated: “That is correct. While the fibers need not be manufactured in the United States, let me be clear that it is the managers’ intent that the man-made core of a wrapped yarn must originate in the United States and that all mechanical processes necessary to convey fibers into yarns must be performed in the United States.” Two of these commenters maintained that, with regard to dyeing, bleaching, or other similar finishing operations, the interim regulation is consistent with past interpretations of the so-called “Breux-Cardin” rule of origin that those finishing operations do not fall within the term “wholly formed.” Another of these

commenters specifically recommended modification of the regulatory texts to clearly reflect the principle that subsequent processing of U.S.-formed yarn may take place in an AGOA beneficiary country. Two commenters took the position that the concept of “wholly formed” under section 112(b)(2) of the AGOA encompasses all operations relating to the production of yarn up to the point that it is ready to be transformed into a new and different article of commerce, that is, fabric. Noting that at this point yarn need not be scoured and bleached or dyed or printed in order to be so transformed, these commenters argued that, therefore, “wholly formed” means, with respect to untextured filament yarns, yarns which have been formed by an extrusion process and fully drawn, and, with respect to spun yarns, yarns which have been formed by the spinning of staple fibers.

CBP’s Response:

Based on the common meaning of the words “wholly” and “formed” as already discussed above in the comment discussion regarding wholly formed fabrics, CBP agrees with the commenters here that dyeing and finishing operations are not part of the yarn formation process. CBP also agrees, based on Congressional intent regarding the intended beneficiaries under the AGOA as noted above in the wholly formed fabric comment discussion, that the application of dyeing and finishing processes to yarn should be limited to the United States and AGOA beneficiary countries.

As to the suggestion that the “Breux-Cardin” rules of origin (that is, the rules set forth in section 334 of the URAA as already mentioned in this comment discussion) support the conclusion that dyeing, bleaching and other similar finishing operations are not part of yarn formation, CBP has already pointed out in this comment discussion that the AGOA legislation is directed only to preferential treatment of certain goods that meet specified production standards

and is not based upon country of origin principles. In addition, section 334, as amended by section 405 of the Act, does not define “wholly formed” in regard to fabric or yarn. In regard to fabric, section 334 describes fabric-making processes which CBP views as the same as fabric formation processes. However, in regard to yarn, section 334 merely addresses origin as being determined by the spinning of fibers or the extrusion and drawing of filaments.

While the spinning of fibers and the extrusion and drawing of filaments form yarns, many yarns are further processed with other yarns by plying or twisting to create specific types of yarns later used in forming fabric or in knitting to shape an apparel component or article. Thus, while some types of yarn are formed by spinning or by extrusion and drawing, other types of yarn are further processed before they are complete. Some yarns may be used without being combined with other yarns, such as a monofilament thread which may be used in hemming a garment. Most yarns, however, must be combined with other yarns to form a multifilament or multiple (folded or plied) yarn to impart the strength and yarn size necessary for use in the production of other textile products. For this reason, the interim rule defined “wholly formed” as it relates to yarn to include all the processes starting with the extrusion of filament or the spinning of fibers into yarn, or both, and ending with a yarn or plied yarn.

For instance, in the case of a cotton/polyester fabric which is woven using a 3-ply yarn consisting of two cotton yarns and one polyester filament yarn, the yarn would be “wholly formed” in the United States if all of the following occurred in the United States: cotton fibers are spun into yarn to form the cotton yarns, the polyester filament is extruded, and the two cotton yarns and the polyester filament are plied to form the 3-ply yarn used in the production of the cotton/polyester fabric. Although the 3-ply yarn consists of three separate yarns, it is the 3-ply yarn which is the final, complete yarn used in the formation of the woven fabric.

CBP agrees with the commenters that wholly formed yarn has to undergo all the processes necessary for the formation of the final, complete yarn which is used in the production of a textile product, such as fabric or knit-to-shape components or articles, whether that final yarn is a monofilament or a plied yarn.

Comment:

Two commenters noted that textured filament yarn is first extruded in an undrawn condition as partially oriented yarn (POY) which cannot be transformed into fabric but rather has no use other than to be drawn and textured in a sequential process on the same machine, with the resulting yarn being, for purposes of the AGOA, wholly formed and now ready to be transformed; therefore, to satisfy the definition of “wholly formed,” the texturing must be done only in the United States.

CBP’s Response:

The process described by the commenters is known as “draw-texturing.” “Draw-texturing” is defined as a process “[i]n the manufacture of thermoplastic fibers, [consisting of] the simultaneous process of drawing to increase molecular orientation and imparting crimp to increase bulk.” Dictionary of Fiber & Textile Technology (KoSa, 1999), at 60. CBP agrees that the texturing of partially oriented yarn (POY) by a process which requires drawing to fully orient the yarn falls within the scope of “wholly formed” as it relates to yarn.

In the definition of “wholly formed” as it relates to yarn, CBP intended to encompass all steps in the production of a yarn or plied yarn up to the point at which it is fully formed or completely shaped as a yarn or plied yarn. Fairchild’s Dictionary of Textiles (7th ed. 1996), at 410, defines “partially oriented yarn” as: “Filament yarn of manufactured fibers that has not been drawn all the way immediately after fiber formation. The drawing (drawstretching) is completed

as part of the draw texturing process. This is a less costly way of processing these yarns than full drawing followed by texturing.” According to Polymers: Fibers and Textiles, A Compendium (John Wiley & Sons, Inc., 1990), at 691, “. . . the principal end use for POY is as a feeder yarn for draw texturing.”

The commenters claim, and CBP agrees, that a partially oriented yarn may not function as a yarn in the manufacture of a textile product until it is further processed into a fully oriented yarn. Consequently, a partially oriented yarn cannot be considered “wholly formed” because it is not fully oriented. In order to be “wholly formed” a yarn must have reached the stage in its formation that nothing else (for example, drawing to fully orient the yarn or plying the yarn with other yarns) need be done to it to complete its formation as a yarn capable of utilization in the production of another textile product, for example, in fabric formation. The completion of the orientation of yarn as a consequence of creating a textured yarn from POY using draw-texturing results in a fully oriented yarn. Thus, the process of draw-texturing falls within the scope of “wholly formed” as it relates to yarn.

Comment:

Two commenters mentioned section 112(b)(3) of the AGOA which refers to “originating” rather than “wholly formed” yarns. After noting that the reason for this distinction is unclear, they argued that, in order to secure the benefits envisioned in the Statement of Policy contained in the AGOA, “originating” should have the same meaning as “wholly formed,” thus assuring that the only beneficiaries are the United States and AGOA countries.

CBP’s Response:

CBP disagrees with these commenters. In the Conference Report relating to the Act of 2000, at page 77, Congress made clear its intent in using the term “originating” in regard to yarn

in section 112(b)(3) of the AGOA. In discussing the apparel articles which fall within the AGOA regional cap provision, the Conference Report included the following parenthetical explanation: “the country of origin of the yarn is to be determined by the rules of origin set forth in section 334 of the Uruguay Round Agreements Act.”

As indicated above in the comment discussion regarding wholly formed fabric, in T.D. 03-15, CBP replaced the original interim § 10.212 definition of “wholly formed” with two definitions, one relating to “wholly formed” fabrics and the other relating to “wholly formed” yarns. Based on the comments received relating to the definition of “wholly formed” as it relates to yarn and the analysis of those comments as set forth above, CBP has in this final rule document further modified the “wholly formed yarns” definition to:

1. Clarify that yarn formation does not encompass dyeing, printing and finishing operations.

Even though the above comment discussion regarding wholly formed yarns refers primarily only to dyeing and finishing operations, the definition also refers to printing because technical sources indicate that printing is relevant to yarns (see, for example, Fairchild’s Dictionary of Textiles [7th ed. 1996] which, at 445, sets forth a definition of “printed yarn”); and

2. Reflect the CBP position with regard to Partially Oriented Yarns (POY).

In addition, the text of new paragraph (b) of § 10.213, mentioned above at the end of the wholly formed fabric comment discussion, includes a clarification that dyeing, printing and finishing operations are not part of the yarn formation process and are only permissible if performed in the United States or in the AGOA beneficiary countries.

Other “Wholly Formed” Issues

Comment:

Two commenters noted that, paramount among the requirements for preferential entry of apparel articles under section 112 of the AGOA, is the requirement that they be made from “fabrics wholly formed...in the United States.” These commenters also noted that the Act does not speak directly to the matter of which fabric(s) in an eligible article must satisfy the criteria set forth in sections 112(b)(1), (b)(2) and (b)(3). Further, they alleged that the practice of CBP is to apply criteria such as those in the AGOA only to that fabric (component) which determines the classification of the apparel article for tariff purposes, that is, the “shell” fabric. However, these two commenters asserted that language in section 103(4) of the AGOA—“negotiating reciprocal and mutually beneficial trade agreements”—as well as past practice clearly indicate that the mandated use of U.S. or sub-Saharan Africa-formed or, where permitted, third country fabric, should apply to all the fabric components of an eligible article, not just the shell fabric. The commenters argued in this regard that in the section 103 language Congress intended the benefits of the Act to redound to producers in the United States as well as Africa and that this can best be accomplished by requiring that all the fabric in an eligible article be formed in the United States (section 112(b)(1) and (b)(2)) or an eligible beneficiary country (section 112(b)(3)). These commenters further argued that in all previous and existing programs which administratively or legislatively granted unilateral trade privileges to eligible apparel articles—for example, the Special Access Program for Caribbean and Andean Pact countries, the Outward Processing Program for certain Eastern European countries, and the Special Regime for Mexico—the fabric origin requirements pertain to all fabric components, and they urged CBP to ensure that this is carried over into the AGOA.

CBP’s Response:

CBP agrees with the commenters that under section 112(b)(1) and (b)(2) of the AGOA,

the requirement that the fabric be formed in the United States means that all the fabric components of eligible articles must be formed in the United States, subject to the special rules set forth in section 112(e). For example, section 112(e)(1) and (e)(2) allow a certain quantity of “findings and trimmings” and “interlinings” to be of foreign origin. There would be no need for these special rules if Congress did not intend that all fabric components of these eligible articles must be formed in the United States. The Conference Report relating to the Act of 2000 at page 76 clearly confirms this Congressional intent.

Consistent with the above, CBP also agrees with the commenters that, under section 112(b)(3) of the AGOA, the requirement that the fabric be formed in a beneficiary sub-Saharan African country means that all the fabric components of eligible articles must be formed in a sub-Saharan African beneficiary country, subject again to the special rules set forth in section 112(e).

Comment:

Two commenters stated that the requirements for wholly-formed fabric do not apply in the case of garment-dyed garments. They noted that fabrics used to produce garment-dyed garments are all scoured and many are bleached as well, and all subsequent dyeing and finishing are then done after the garment is cut and assembled. CBP must therefore make a distinction between fabrics wholly formed for garments which are not garment-dyed and fabrics for garments which are garment-dyed because commercial practice compels this. The essential determinant is that the fabric is in the state at which it is ready to be transformed into a new and different article of commerce.

CBP’s Response:

CBP believes that the term “wholly formed” as it pertains to fabric must have a single, consistent meaning throughout the regulations. As CBP has explained in the comment

discussion above regarding the definition of “wholly formed” as it pertains to fabric, dyeing, printing and other finishing operations do not fall within the scope of “wholly formed.” Thus, the distinction urged by these commenters does not have to be made. It should be noted, however, that garment dyeing after assembly is not permitted in the case of apparel articles covered by section 112(b)(1)(A) of the AGOA and § 10.213(a)(1) of the regulations because garment dyeing is not considered to be incidental to assembly for purposes of subheading 9802.00.80, HTSUS.

Comment:

One commenter stated that although both the AGOA and the interim regulations are silent with respect to post-yarn-formation and post-fabric-formation processes such as dyeing, bleaching, printing, and coating, that silence should not mean that post-formation processes performed in Canada would disqualify the article from AGOA eligibility. This commenter argued that as long as the fabric is woven or knit or otherwise formed in the United States and as long as the yarn is spun or extruded in the United States, and because those minor, incidental post-formation processes in Canada do not alter its identity as fabric or yarn, it should be considered to have met the definition of “wholly formed” for purposes of the AGOA. The commenter therefore agreed with the definition of “wholly formed” as set forth in the interim regulations and further suggested that this is consistent with the practice under the CBI Special Access Program and under the country of origin rules contained in § 102.21 of the CBP regulations.

CBP’s Response:

CBP of course agrees with the views expressed by this commenter regarding the definition of “wholly formed” and the distinction between fabric and yarn formation and dyeing,

printing and finishing operations. However, CBP does not share the view that since finishing operations are not part of formation, those operations may occur anywhere and the fabric and yarn would remain eligible for use in apparel receiving benefits under the AGOA. As already discussed above in the portions of this comment discussion regarding the definition of “wholly formed” as it pertains to fabric and yarn, Congress expressed its intent in the Conference Report relating to the Act of 2000 and in section 103 of the statute that the AGOA benefits are to accrue to sub-Saharan African countries and to U.S. producers. CBP believes that permitting dyeing, printing and finishing operations to be performed on fabric in countries other than the United States and AGOA beneficiary countries would be contrary to Congressional intent and therefore should not be allowed. As indicated above, 19 CFR 10.213(b)(1) has been modified in this final rule document to clarify this position.

Scope of the Terms “Yarn” and “Thread”

Comment:

One commenter stated that the regulations should clarify that wherever the word “yarn” is used, it means textile yarns of the sort classified in Chapters 50-59 of the HTSUS and does not include other non-textile products which may be knitted or woven into a textile product (for example, rubber thread of the sort classified in heading 4007 of the HTSUS). This commenter further suggested that paragraph (a)(3) of § 10.213 should be changed to clarify that “thread formed in the United States” refers only to textile sewing thread used to assemble cut parts of garments and does not include rubber thread used in fabric formation.

CBP’s Response:

In § 10.213(a)(3) (section 112(b)(2) of the AGOA), the term “thread” is used in the context of requiring the use of “thread formed in the United States” in the assembly of apparel

articles in one or more AGOA beneficiary countries. “Thread” is used in the same context in section 112(b)(7) of the AGOA (§ 10.213(a)(11) of the regulations), which was added by the Act of 2002. Based on the context in which the term “thread” is used in the statute, CBP believes that Congress was referring to sewing thread. Accordingly, CBP agrees with the suggestion of the commenter in this regard, and § 10.213(a)(3) and (a)(11) have been modified in this final rule document by inserting the word “sewing” into the text before the word “thread.”

CBP agrees with the commenter that “yarn” as used in the AGOA refers to textile yarn. However, CBP disagrees with the commenter’s suggestion that “yarn” be defined as textile yarns classified in Chapters 50-59 of the HTSUS. In the comment discussion above regarding “wholly formed” as it relates to yarn, CBP set forth a definition of yarn which appears in two related textile dictionaries and which refers to “textile” materials. A similar approach is taken in other technical textile dictionaries. For example, “yarn” is defined in Fairchild’s Dictionary of Textiles (7th ed. 1996), at 641, in part, as: “A continuous strand of textile fibers that may be composed of endless filaments or shorter fibers twisted or otherwise held together. Yarns may be single or ply and form the basic elements for CABLED YARN, FABRIC, THREAD, AND TWINE. Yarns can be utilized in many such fabric-making processes as weaving, knitting, crocheting, tatting, netting, or braiding, depending on the result desired and the character of the yarn.” In The Modern Textile and Apparel Dictionary (1973), at 676, “yarn” is defined, in part, as: “A generic term for an assemblage of fibers or filaments, either natural or man-made, twisted together to form a continuous strand which can be used in weaving, knitting, braiding, or plaiting, or otherwise made into a textile material.”

For purposes of this discussion, CBP also notes definitions of “yarn” from non-technical sources. “Yarn” is defined, in relevant part, in The Random House Unabridged Dictionary,

Second Edition (1993), at 2200, as “1. thread made of natural or synthetic fibers and used for knitting and weaving. 2. a continuous strand or thread made from glass, metal, plastic, etc.” It is defined, in relevant part, in Webster’s Third New International Dictionary (1993), at 2647, as: “1.a: a continuous strand often of two or more plies that is composed of carded or combed fibers twisted together by spinning, filaments laid parallel or twisted together, or a single filament, is made from natural or synthetic fibers and filaments or blends of these, and is used for the warp and weft in weaving and for knitting or other interlacings that form cloth b: a similar strand of metal, glass, asbestos, paper, or plastic used separately or in blends c: THREAD; esp.: a component of a plied thread.” While the HTSUS offers some discussion of attributes of various yarns and gives guidance as to yarns classified within Section XI of the HTSUS, it provides no definition of yarn.

CBP has defined the phrase “textile or apparel product” in the context of the rules of origin for textile and apparel products set forth in § 102.21 of the CBP regulations (19 CFR 102.21) which implements § 334 of the URAA. CBP believes that defining “yarn” as suggested by the commenter would result in “yarn” in the AGOA context having a narrower meaning than “yarn” in the context of the rules of origin for textiles. CBP does not believe that Congress in drafting the AGOA intended to change the scope of “textile and apparel articles” as understood under § 334 or under the Agreement on Textiles and Clothing to which the United States is a signatory. In determining the scope of the term “yarn,” as well as the term “fabric,” CBP will rely upon the scope of “textile and apparel articles” as set forth in 19 CFR 102.21. Therefore, CBP sees no need to define “yarn,” or “fabric” for that matter, in these regulations.

Comment:

With regard to thread, two commenters argued that Congress has made a clear distinction

between “wholly formed” and “formed.” Therefore, although the thread does not have to be “wholly formed” in the United States, it nevertheless must be thread, that is, it must have undergone an extrusion or spinning process and subsequent doubling (plying) process necessary to give it the unique properties of thread. These commenters further stated that whereas thread formation must take place in the United States, subsequent processing such as lubricating, bleaching or dyeing may be performed outside the United States. However, the commenters argued that, in order to satisfy the requirements set forth in the Statement of Policy contained in the AGOA, any subsequent processing of the thread may only be done in a beneficiary country or the United States and not in any third country.

CBP’s Response:

CBP agrees with the above comment except for the statement that thread must be plied in order to have the unique properties of thread. As stated in the immediately preceding comment response, CBP believes Congress was referring to sewing thread in section 112(b)(2) and (b)(7) of the AGOA when it referred to “thread formed in the United States.” In order to be recognized and usable as sewing thread, thread must be in its final form, that is, generally plied with a “Z” twist. However, sewing thread is not always plied, nor does it always have a “Z” twist.

CBP believes that Congress in using the term “thread” in section 112(b)(2) and (b)(7) meant “sewing thread” in all its various commercially used forms. Sewing thread is a form of yarn and is made from yarn. Like yarn, sewing thread may be made in various ways. In the Dictionary of Fiber & Textile Technology (Hoechst Celanese, 1990), at 161, “thread” is defined, in relevant part, as “1. A slender, strong strand or cord, especially one designed for sewing or other needlework. Most threads are made by plying and twisting yarns. A wide variety of thread types is in use today, e.g., spun cotton and spun polyester, core-spun cotton with a polyester

filament core, polyester or nylon filaments (often bonded), and monofilament threads.”

While most sewing thread consists of yarns which have been plied, some may consist of a single monofilament. In order to avoid limiting the type of sewing thread formed in the United States which may be used in the assembly of textile apparel in the AGOA beneficiary countries for purposes of section 112(b)(2) and (b)(7) of the AGOA and § 10.213(a)(3) and (a)(11) of the regulations, respectively, CBP believes that “sewing thread” should be defined for AGOA purposes not on the basis of a type of construction but rather only with reference to the way it is used. Section 10.212 has been modified in this final rule document by the addition of a definition of “sewing thread” in paragraph (p) to reflect this position. CBP believes this definition will ensure that there are no undue restrictions on the options for apparel manufacturers as to the type of U.S. sewing thread they may use in the construction of their garments.

CBP agrees with the commenters that once sewing thread is “formed,” subsequent processing such as lubricating, bleaching or dyeing will not alter that formation. In addition, based on the CBP position set forth in the comment discussion regarding “wholly formed” fabrics, CBP also agrees with the commenters that processing of sewing thread after its formation may be done in the United States or in the AGOA beneficiary countries but not elsewhere.

Articles Knit-to-Shape in the United States

Two commenters complained that the product descriptions in § 10.213 do not make adequately clear that garments knit-to-shape in the United States, or garments assembled with components knit-to-shape in the United States, are eligible for duty-free and quota-free treatment under the Act. However, as these concerns were addressed by the subsequent amendments made

to the AGOA by section 3108(a) of the Act of 2002, no further response is required.

Cutting in the United States and Beneficiary Countries

Comment:

Two commenters stated that, as a basic principle, cutting should be allowed either in the United States or in the AGOA beneficiary countries or in both, and they suggested that CBP should clarify this point in the regulations. These commenters argued that the benefits under the AGOA should be accorded so long as the assembled goods came from components made from U.S. fabric made from U.S. yarn. One of these commenters further argued that Congress did not intend a narrow reading of the statute, that is, that cutting of portions of the garment in the United States and a beneficiary country would disqualify a garment while cutting of portions in the United States or a beneficiary country would not. The commenter noted in this regard that an October 18, 2000, letter from the Ways and Means Committee Chairman and Ranking Minority Member and Trade Subcommittee Chairman states that “garments assembled in eligible countries from U.S. fabric/U.S. yarn are eligible for preferential treatment, regardless of whether portions of the garment were cut both in the beneficiary country and in the United States.”

CBP’s Response:

With respect to the question of whether, or to what extent, cutting of fabric may be performed in both the United States and a beneficiary country, CBP notes initially that the only specific interpretative reference to this issue in the interim regulations was in the definition of “cut in one or more beneficiary countries” in § 10.212. These words were defined there to mean that “all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries.” The section-by-section discussion of the interim amendments in T.D. 00-67 stated that this definition “precludes any cutting operation performed in a country

other than a beneficiary country in accordance with the clear language of the statute.”

CBP does not dispute the commenters’ assertion that the AGOA was intended to accord preferential treatment to garments assembled in a beneficiary country from U.S.-formed fabric made from U.S.-formed yarn. However, in addition to requiring the use of U.S.-formed fabric and yarn, paragraphs (b)(1) and (b)(2) of section 112 of the AGOA also specify the location of the cutting of the fabric: the United States for paragraph (b)(1) and a beneficiary country for paragraph (b)(2). Thus, as a general matter, CBP cannot agree with the commenters that, under these provisions, whether cutting is performed entirely in the United States or in a beneficiary country, or both, is essentially irrelevant. CBP believes that the statutory language relating to the location of the cutting in each provision cannot be ignored. Regarding the reference to the October 18, 2000, letter, CBP submits that its post-enactment origin precludes it from being dispositive on any interpretative issue regarding the legislation.

However, CBP agrees that these statutory provisions permit certain cutting to be performed both in the United States and in one or more beneficiary countries. CBP believes that the cutting issue has been raised by the commenters primarily in regard to paragraphs (b)(1)(A), (b)(1)(B) and (b)(2) of section 112 of the AGOA (covered by § 10.213(a)(1), (a)(2) and (a)(3) of the regulations, respectively). CBP will address this issue as it relates to paragraph (b)(1) first.

Paragraph (b)(1) encompasses apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, that (1) are entered under subheading 9802.00.80, HTSUS, or (2) would have qualified for entry under subheading 9802.00.80 but for the fact that the articles were subjected to certain specified processes, such as stone-washing and screen printing. As a preliminary matter, CBP interprets the reference to cutting in this context to mean that all fabric components

comprising the eligible article must be cut in the United States.

Concerning what, if any, additional cutting may be performed in a beneficiary country under this provision, CBP submits that this is dependent upon the extent to which cutting abroad is permitted under subheading 9802.00.80, HTSUS, because of the statutory reference to this subheading. CBP believes that articles for which preference is sought under paragraph (b)(1) are subject to the conditions and requirements that apply under subheading 9802.00.80 and its implementing regulations (19 CFR 10.11-10.26), except for the additional processing specifically permitted by paragraph (b)(1)(B). Under subheading 9802.00.80, only assembly operations and operations incidental to assembly may be performed abroad. Examples of operations incidental to assembly are set forth in 19 CFR 10.16 and include “trimming ...or cutting off of small amounts of excess materials” and “cutting to length of...products exported in continuous length.” However, this regulation further sets forth “cutting of garment parts according to pattern from exported material” as an example of an operation that is not incidental to assembly.

Thus, it is the position of CBP that only cutting that is incidental to the assembly process abroad, within the meaning of subheading 9802.00.80, HTSUS, may be performed in a beneficiary country under paragraph (b)(1) of section 112.

Paragraph (b)(2) of Section 112 of the AGOA differs from paragraph (b)(1), in part, in that it refers to cutting of fabric “in one or more beneficiary sub-Saharan African countries” (rather than in the United States) and it contains no reference to subheading 9802.00.80, HTSUS. As indicated above, the definition of “cut in one or more beneficiary countries” in the interim regulations was intended to preclude any cutting of fabric in any country other than a beneficiary country. However, CBP has re-evaluated that intention in light of the fact that the definition of

the phrase “assembled in one or more beneficiary countries” (appearing in paragraph (b)(2) of Section 112 of the AGOA and in the corresponding regulatory provision, § 10.213(a)(3)) set forth in § 10.212 of the interim regulations conflicts with the § 10.212 definition of “cut in one or more beneficiary countries.” This conflict arises from the fact that the definition of “assembled in one or more beneficiary countries” allows a prior partial assembly operation to be performed in the United States, which presupposes that the fabric components involved in that assembly operation were cut in the United States.

To resolve this apparent conflict, CBP in this final rule document has amended the definition of “cut in one or more beneficiary countries” in § 10.212 to expressly authorize the cutting of fabric components in the United States but only to the extent that those components are used in a prior partial assembly operation in the United States. CBP submits that this limitation on the extent of the cutting that may be performed in the United States under this provision is warranted by the fact that the provision mentions cutting only in reference to one or more beneficiary countries.

CBP also notes that, under paragraph (b)(2) of section 112, the cutting of bolts of fabric in the United States into fabric pieces of smaller dimensions would be acceptable since the requirement that the articles be produced from fabric would be fulfilled.

Finally, CBP notes that the commenters’ concerns regarding cutting have been at least partially addressed by the addition of new paragraph (b)(7) to section 112 of the AGOA by section 3108(a) of the Act of 2002. This change was made to cover combinations of various production scenarios involving beneficiary countries and the United States described in other paragraphs in section 112 of the AGOA. Section 112(b)(7) specifies that the cutting of fabric is to be performed “in the United States and one or more beneficiary sub-Saharan African countries

or former beneficiary sub-Saharan African countries.” (Paragraph (b)(7) of section 112 of the AGOA was subsequently amended by section 7(d) of the Act of 2004, to allow beneficiary countries that may in the future graduate from AGOA to still provide the qualifying components for assembly in beneficiary countries.)

Merino Wool Sweaters

Comment:

Two commenters referred to the so-called “merino wool” sweater provision in the AGOA (section 112(b)(4)(B)) and in the regulatory texts (§ 10.213(a)(7)). They expressed disappointment that the interim regulatory text did not address and correct a legislative drafting error in the definition (description) of the goods in question that has the effect of creating a benefit for a product that does not exist. To fix this problem, the commenters recommended substitution of the word “greater” for “finer” in the regulatory text so that the text would refer to “wool measuring 18.5 microns in diameter or greater.”

CBP’s Response:

Congress used the term “finer,” and CBP does not have the authority to vary from the statutory language by substituting the term “greater” as requested by the commenters. However, it appears that the concerns of the commenters have been addressed by an amendment to section 112(b)(4)(B) made by section 3108(a) of the Act of 2002. Paragraph (b)(4)(B) and the corresponding regulatory text, § 10.213(a)(7), now refer to “wool measuring 21.5 microns in diameter or finer.”

The Findings and Trimmings Exception

Four commenters provided comments or suggestions regarding the findings and trimmings rule set forth in section 112(e)(1) of the AGOA. One of these commenters simply

endorsed the CBP interpretation in § 10.213(b)(2) that gives precedence to the findings and trimmings rule over the de minimis rule (section 112(e)(2) of the AGOA) in cases where the two rules are in conflict. The various comments or suggestions of the other three commenters are discussed below.

Comment:

The regulations should clarify, in § 10.213(b)(1)(i), that narrow elastic fabrics used for waistbands, leg closures, and similar applications are not considered “findings and trimmings” and must be formed in the United States if the garments are to receive preferential treatment.

CBP’s Response:

The regulatory text in question (re-designated in this final rule document as § 10.213(c)(1)(i) as discussed above) states that elastic strips are findings and trimmings only if they are each less than 1 inch in width and are used in the production of brassieres. Accordingly, CBP believes that it is already sufficiently clear that narrow elastic fabrics used for waistbands, leg closures and similar applications are not considered findings and trimmings.

Furthermore, CITA has clearly stated that the foreign origin exception for elastic strips under the Special Access program was intended to be limited to narrow elastic fabrics for use as brassiere straps and not to include elastic fabrics such as those used in waistbands. See Clarification of Requirements for Participation in the Caribbean Basin Special Access Program, 52 FR 26057 (1987).

CBP disagrees with the commenter’s statement that those narrow elastic fabrics must be made only in the United States. In some circumstances, the AGOA statutory and regulatory provisions expressly permit the use of fabric formed in one or more beneficiary countries or in any country in the case of lesser developed beneficiary countries.

The Act of 2004 amended section 112(d) of the AGOA (now section 112(e)) by adding a new special rule providing that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because it contains certain specified components, including “waistbands” and “straps containing elastic,” that do not meet the applicable production requirements set forth in section 112(b), regardless of the country of origin of the component. CBP in this final rule document has incorporated the above new rule in new § 10.213(c)(1)(v) of the regulations.

Comment:

In addition to the named findings and trimmings mentioned in the statutory language, other examples of findings and trimmings should be added to the text in § 10.223(b)(1)(i) based on CBP rulings issued under the Special Access and Special Regime programs. These involve the following: patches that symbolize a brand and add ornamentation (HQ 560726, HQ 560520); reinforcing tape (HQ 559961, HQ 560398); and slide fasteners, featherbone, belting, and braids (HQ 559738). In addition, trimmings similar in use to decorative lace, such as piping or decorative strips of fabric reinforcement at seams or raw edges, are appropriate to be included as “trimmings” for purposes of the statute because they are equivalent to decorative lace trimming while performing functions similar to reinforcing tape.

CBP’s Response:

Although CBP agrees that the other items have been previously found to qualify as findings and trimmings under the Special Access program and subheading 9802.00.90, HTSUS, CBP has concluded that there is no need to list additional examples. The list of findings and trimmings is intended to be representative in nature and is not an exhaustive list. With respect to items that have not previously been ruled upon, CBP intends to deal with the items on a case-by-

case basis through interpretive rulings.

Comment:

Narrow elastic fabric should be considered the same as in the past in the Special Access program, that is, except for elastic strips of 1 inch width or less used in the manufacture of brassieres, narrow elastic fabric should be excluded from “findings and trimmings.”

CBP’s Response:

CBP agrees with the comment and feels that the position is adequately set forth in the regulation. It should be noted that the statute and regulations refer to elastic strip “less than 1 inch in width” not “1 inch width or less.”

Comment:

The various “knit-to-shape” exclusions were developed with wide fabric or “large tube” circular knit fabric in mind. Knitted or woven narrow elastic fabric was not intended to be part of this category and should not be part of any exclusion but rather should be treated in a similar manner as sewing thread and therefore must be made in the United States.

CBP’s Response:

The commenter appears to be referring to narrow circular knit fabric and any other kind of narrow elastic fabric (knit or woven) used in the production of a garment. CBP would agree that those narrow elastic fabrics, if not less than 1 inch in width and used in the production of brassieres, are not subject to the findings and trimmings exception. However, for the reasons noted earlier in this comment discussion, CBP disagrees with the contention that those narrow elastic fabrics must be made only in the United States.

The De Minimis Rule

Comment:

A commenter stated that the relevance of including the word “fibers” in the statutory language was unclear because the statute contains no requirements that “fibers” be formed in the United States or a beneficiary country and thus the inclusion of foreign fibers in yarns or fabrics does not affect the apparel’s eligibility. This commenter argued that it would have been more appropriate for the statute to refer to “yarns or fabrics” in place of “fibers or yarns” and that the anomaly in the present statute substantially reduces the already minimal flexibility provided under the AGOA to use non-U.S.-formed inputs.

CBP’s Response:

The commenter is correct that there is no requirement that “fibers” be formed in the United States or a beneficiary country and thus the reference to fibers in the statutory provision appears to be unnecessary. Although the regulatory language at § 10.213(c)(1)(iv), consistent with the statute at 19 U.S.C. 3721(e)(2), mentions fibers, the inclusion of foreign fibers in yarns or fabrics will not affect the eligibility of an apparel article.

Elastic Rubber Tape

Comment:

One commenter urged CBP to include in the final regulations language that requires elastic rubber tape to be classified similarly to narrow web elastic and spandex so as to receive the same protection and treatment under the AGOA, that is, that it must be wholly formed in the United States. In support of this position, the commenter stated that elastic rubber tape is distinguished from rubber thread by its width (greater than 1/16 of an inch and no greater than 6

inches) and is distinguished from rubber ribbon by consisting of a single “end” as opposed to multiple ends in the case of ribbon. In addition, this commenter asserted that flat rubber tape competes with, and is a substitute for, woven or knit elastic web and logically should be subject to the same U.S.-formed requirement as elastic web.

CBP’s Response:

As the commenter noted, rubber tape is distinguished from both narrow web elastic and spandex by virtue of its construction and composition. Both narrow web elastic and spandex are textile products. Spandex is a well known man-made fiber textile product. Narrow web elastic is a fabric produced by combining synthetic or natural rubber thread with textile fiber. Rubber tape and elastic rubber tape as referenced in the comments are the same product which is not a textile product because it is made of rubber. The Conference Report relating to the Act of 2000 states at page 76 that “the requirement that products must be assembled from fabric formed in the United States applies to all textile components of the assembled products, including linings and pocketing, subject to the exceptions that currently apply under the 'Special Access Program.'” Thus the Conference Report reflects a legislative intent to promote the use of U.S. textile fabric and yarn. There is no indication in the statute or legislative history of a requirement that rubber tape, a non-textile component, be of U.S. origin. Accordingly, notwithstanding the potential economic impact on U.S. rubber tape producers, CBP does not find a basis in the statute or in its legislative history to require rubber tape to be wholly formed in the United States.

Post-Assembly Processing

Comment:

Four commenters were of the opinion that the regulations should make it clear that certain processes (such as embroidery, stonewashing, enzyme washing, acid washing, oven-

baking, perma-pressing, garment dyeing, screen printing, or similar processes) do not disqualify a garment for preferential treatment when all other criteria for eligibility are met. In support of this position, it was argued that the AGOA is silent on the permissibility of post-assembly operations for merchandise entered under section 112(b)(2) of the AGOA only for the reason that it is understood that those post-assembly operations are permitted because the merchandise in question will not be entered under HTSUS heading 9802. Moreover, there is no proscription against post-assembly processing anywhere in the HTSUS or in the CBP regulations except for heading 9802. Finally, the commenters argued that a significant portion of garments produced in the sub-Saharan region under the AGOA will undergo post-assembly processing, that Congress did not intend them to be denied preferential treatment because no specific reference appeared in the AGOA, and that Congress in fact did intend that those processes be performed in beneficiary countries.

CBP's Response:

CBP fully agrees with these commenters that apparel articles that satisfy the criteria for eligibility under section 112(b)(2) of the Act should not be disqualified from receiving preferential treatment because they are subjected to one or more post-assembly processes, such as embroidery, stonewashing, and garment dyeing, in a beneficiary country. Consistent with the conclusion reached in regard to whether dyeing and finishing of fabric, yarn and thread may be performed other than in a beneficiary country or in the United States, CBP believes that post-assembly finishing processes may only be performed in beneficiary countries or in the United States.

Accordingly, CBP in this final rule document has included in new paragraph (b) of § 10.213 a subparagraph (2) to clarify that articles otherwise entitled to preferential treatment

under the AGOA will not be disqualified from receiving that treatment because they undergo post-assembly operations (such as those mentioned in section 112(b)(1)(B) of the Act) in the United States or in one or more beneficiary countries. As in the case of the dyeing, printing and finishing operations covered by new paragraph (b)(1), under this new paragraph (b)(2), those other operations may only be performed in the United States or in a beneficiary country. New paragraph (b)(2) also includes a caveat that in the case of articles covered by paragraph (a)(1) of § 10.213, a post-assembly operation performed in a beneficiary country must be incidental to the assembly process.

Short Supply Provisions

Four commenters submitted observations on the interpretation and application of the so-called short supply provisions (section 112(b)(5) of the AGOA and § 10.213(a)(8) and (a)(9) of the interim regulations).

Comment:

One commenter urged CBP to clarify what is considered a qualifying product under the § 10.213(a)(8) short supply provision, to ensure that it coincides with the NAFTA short supply rules as was intended by Congress. This commenter argued that, under the NAFTA, a garment qualifies for short supply treatment if the fabric that provides its essential character and determines its classification is one that has been identified as being in short supply. The fact that linings or other items are not made in the United States or a beneficiary country is not relevant, and that should be clear from the regulations.

CBP's Response:

CBP notes initially that the Act of 2004 amended the short supply provision in section

112(b)(5) of the AGOA by removing the words “from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country.” As amended to reflect this change, § 10.213(a)(8) has two parts: First, the apparel article must be both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries and, second, the fabric or yarn of which the article is constructed must have been determined to be in short supply. There appears to be no issue regarding the first part. On the second part, there is no question raised regarding the use of the predetermined short supply fabrics and yarns but rather only on what requirements, if any, the remaining fabrics or yarns in the apparel article must meet. CBP believes that the last portion of the provision clearly states the intent and thus provides an answer to that question. That portion of the text provides that an apparel article constructed of yarns or fabrics that were determined to be in short supply may receive preferential treatment under the AGOA if those apparel articles would be eligible for preferential treatment under the rules of origin in Annex 401 of the NAFTA. In the absence of a qualifier to this language, CBP believes it is clear that the drafters intended that this provision use the same rules as those used in the NAFTA. That is, an apparel article would qualify for preferential treatment if the article is made of a short supply fabric or yarn that determines its classification.

As to the commenter’s concern regarding linings not made in the United States or a beneficiary country, CBP believes that the regulation as drafted is clear that the rules of origin in Annex 401 of the NAFTA apply. Therefore, if under those rules for the apparel article at issue the origin of the lining is of no consequence, then the commenter is correct, the fact that the lining is not made in the United States or a beneficiary country is not relevant. However, if the lining material is relevant to the rule applicable to the apparel article at issue, then the origin of the lining material may be relevant. Such determinations must be made on a case-by-case basis

and are best addressed through the rulings process.

Comment:

A commenter took the view that the short supply regulatory provisions (§ 10.213(a)(8) and (a)(9)) do not clearly state the requirement under the statute that all yarn and fabric components of an apparel article other than those that determine the classification must be wholly formed in the United States. The following points were made by this commenter in support of this interpretation of the statute:

1. The AGOA mandates the use of fabrics wholly formed in the United States for all fabric components except for specific fabrics that are not available in the United States.
2. An interpretation of the statute allowing non-U.S. fabric for all fabric components in the case where the outer shell alone is of a fabric that cannot be supplied in commercial quantities would be an inappropriate imposition on the AGOA program.
3. Whereas the NAFTA was a negotiated agreement among nations in which concessions regarding the “short supply” list made sense, the AGOA program is a unilateral gift of the United States to the nations of sub-Saharan Africa and ought to be construed to require the use of U.S. fabrics in all cases except for the specific fabric which cannot be supplied in commercial quantities.

CBP’s Response:

CBP does not agree with this commenter that all yarn and fabric components of an apparel article other than those that determine the classification must be wholly formed in the United States. The text dealing with short supply or non-availability of fabric provides in effect that an apparel article constructed of yarns or fabrics that were determined to be in short supply may receive AGOA preferential treatment if that apparel article would be eligible for preferential

treatment under the rules of origin in Annex 401 of the NAFTA. In the absence of a qualifier to this language, CBP believes it is clear that the drafters intended that this provision use the same rules as those used in the NAFTA. That is, an apparel article would qualify for preferential treatment if the article were made of a short supply fabric or yarn that determines the classification of the article. See Note 2 to Chapter 61 and Note 3 to Chapter 62 of Annex 401 of the NAFTA.

Comment:

A commenter referred to trade advisory TBT-00-023 entitled “Implementation Information for the CBTPA for Textile and Apparel Products” issued by CBP Headquarters on October 20, 2000, which included, among other things, a list of fabrics covered by the Caribbean Basin Trade Partnership Act short supply provisions. According to the commenter, the list in TBT-00-023, which would apply equally for purposes of the AGOA short supply provisions, was not complete because it omitted some products (for example, visible lining fabrics woven from foreign yarns as specified in NAFTA rule 1 for Chapters 61 and 62 within HTSUS General Note 12(t), and all yarns and fabrics covered by HTSUS headings other than those specifically excluded in the specific rules of origin) that would not be precluded from receiving NAFTA treatment under the NAFTA rules even though they do not qualify under the regular “yarn forward” concept. The commenter argued that all yarns and fabrics that allow apparel traded between NAFTA parties to qualify for NAFTA preference (that is, that allow apparel to meet the NAFTA rules of origin under Annex 401) should be considered as eligible under the AGOA preference.

CBP’s Response:

TBT stands for “Textile Book Transmittal.” Textile Book Transmittals provide textile

information to the trade community from CBP and are issued by the Textiles and Trade Agreements Division. TBTs may be found on the CBP web site at http://www.cbp.gov/xp/cgov/trade/priority_trade/textiles/tbts/.

CBP agrees that the list included in TBT-00-023 was not complete. CBP has since issued further clarifications that include all of the short supply fabrics and yarns that are covered by the two short supply provisions set forth in section 112(b)(5)(A) and (B) of the AGOA (§ 10.213(a)(8) and (a)(9) of the regulations, respectively). Those issuances are TBT-01-004 dated September 18, 2001, TBT-04-009 dated April 21, 2004, TBT-04-019 dated June 28, 2004, and TBT-04-021 dated July 1, 2004. However, the first of those issuances, which relates to the § 10.213(a)(8) short supply provision, does not list the visible lining fabrics mentioned by this commenter because those fabrics are not treated as short supply fabrics under the NAFTA.

CBP has already addressed above the commenter's concern that CBP ensure that all interested parties are made aware that the rules for the short supply provisions will be interpreted in the same way for both the NAFTA and the AGOA.

Comment:

One commenter noted that draft regulations implementing the short supply program for fabrics and yarn have not yet been issued and indicated that it had sent detailed suggestions to the Office of the U.S. Trade Representative on how the regulations should be drafted. The commenter suggested that further delay is unwarranted because short supply requests have already been submitted.

CBP's Response:

The commenter refers to a matter that falls within the jurisdictional authority of agencies other than CBP and therefore is not an appropriate subject for these regulations. CBP further

notes in this regard that on March 6, 2001, the Committee for the Implementation of Textile Agreements (CITA) published in the **Federal Register** (66 FR 13502) a notice setting forth procedures to be used in considering requests under the AGOA short supply provisions.

Meaning of “Entered” in § 10.213(a)(1)

Comment:

One commenter noted that § 10.213(a)(1) refers to articles “entered” under HTSUS subheading 9802.00.80. The commenter expressed concern that the use of this term suggests that post-entry claims are not allowed and therefore, to solve this problem, suggested replacing “entered” by “classified.”

CBP’s Response:

The use of the word “entered” reflects the wording of the underlying statute and also is appropriate from a technical and practical standpoint because it is the entry process that brings an AGOA import transaction under the jurisdiction of a CBP office (the suggested word “classified” would have no relevance outside an entry context). With regard to the specific concern expressed by this commenter, there was no intention on the part of CBP, by using the word “entered” in this context, to restrict the ability of an importer to submit post-entry information to CBP prior to the date on which liquidation of the entry in question becomes final.

Certificate of Origin

Four commenters submitted observations on one or more aspects of the Certificate of Origin as provided for in § 10.214 and referred to in §§ 10.215 and 10.216. To the extent that comments received regarding the Certificate of Origin set forth in T.D. 00-67 are still relevant to the subsequent Certificate of Origin set forth in T.D. 03-15, CBP will respond.

Comment:

One commenter complained that the Certificate of Origin is unnecessarily complicated and thus presents an obstacle to achieving the goals of the AGOA. The commenter questioned whether the identification of options for benefits is necessary given that the Certificate is not required by the Government but rather is part of the importer's record keeping. This commenter further questioned whether in fact the Certificate of Origin is even necessary since the importer is accountable for records that establish eligibility for benefits.

CBP's Response:

Section 113(b)(1)(A) of the AGOA requires importers claiming preferential treatment under section 112 of the AGOA to comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA and requires the Secretary of the Treasury to promulgate regulations to that end. Article 502(1) of the NAFTA covers procedures regarding the use of a Certificate of Origin. In view of the clear mandate in the AGOA to apply the NAFTA Certificate of Origin approach, CBP has no authority to vary from that approach by dispensing with the Certificate of Origin requirement in these regulations.

As regards the commenter's assertions that the identification of options for benefits is not necessary and that the Certificate of Origin is not required by the Government, CBP disagrees with both points. The identification of the specific basis for claiming preferential treatment is like the approach under the NAFTA whereby the preparer of the Certificate of Origin identifies the specific rule of origin standard upon which the claim for NAFTA duty treatment is based. Further, although the Certificate of Origin is not provided for in the regulations as a condition of entry, similar to the practice under the NAFTA, it not only must be in the possession of the

importer when the claim under the AGOA is made but also, under § 10.216(b), must be provided to CBP upon request.

Comment:

A commenter questioned the propriety of using a NAFTA-type Certificate of Origin, suggesting in this regard that in some respects the Certificate of Origin should be more like ITA Form 370P. The commenter noted in this regard that because the 807A+ and 809+ programs in most instances, including the selection of the fabric used, are controlled by the U.S. importer, it makes little sense to ask an African producer of apparel to attest to the accuracy of the identity of the manufacturer of U.S. yarn or thread. Therefore, this commenter recommended that § 10.214(a) be revised to permit the United States importer to sign the Certificate on the same basis on which the producer or exporter may sign it.

CBP's Response:

As indicated in the previous comment response, CBP has no latitude to vary from the Certificate of Origin approach. As regards who may sign the Certificate of Origin, the interim regulations provide that the exporter or the exporter's authorized agent may sign the Certificate. Section 113(b)(1)(B) of the AGOA makes each beneficiary country responsible for implementing and following procedures and requirements similar in all material respects to those under Chapter 5 of the NAFTA. As Chapter 5 of the NAFTA does not authorize the preparation of the Certificate of Origin by the importer, CBP has no authority to provide in these regulations for the preparation and signature of the AGOA textile Certificate of Origin by the U.S. importer.

However, as discussed later in this document under "Additional Changes to the Regulations," CBP has determined that the Certificate may be prepared and signed by the producer or exporter or by the producer's or exporter's authorized agent having knowledge of the

relevant facts.

Comment:

Three commenters objected, principally on business confidentiality grounds, to the inclusion of specific information regarding fabric, yarn and thread producers in blocks 6-8 on the Certificate of Origin. One of these commenters suggested that, as regards yarn producer information, the Certificate of Origin should have provision for stating that the information may be obtained from the fabric producer when the fabric producer provides a statement to the garment producer, exporter or importer that this information will be provided directly to CBP upon request. The other two commenters suggested that, in lieu of including the specific information in blocks 6-8, the regulations should allow the inclusion of words such as “available to CBP upon request.” One of them pointed out that this would be similar to the approach taken regarding producer information on the NAFTA Certificate of Origin and in the instructions for block 2 in § 10.214(c)(3).

CBP’s Response:

CBP notes that it is incumbent upon the importer to know the facts of the transaction. If the U.S. importer wishes to make an AGOA claim, it is important that the origin of the raw materials used in the production of the garment be known in order to assess whether the garment qualifies. While for CBP import purposes it is the importer’s responsibility to have the necessary information and documentation to justify any claim for preferential treatment, it is the exporter’s or producer’s responsibility under the AGOA to accurately complete and sign the Certificate of Origin.

When CBP requests the Certificate of Origin, CBP wants, among other things, the name of the fabric and yarn supplier that makes this merchandise eligible for AGOA benefits. CBP is

given the responsibility to enforce and administer this program. In order to ensure that importers are properly claiming benefits under the AGOA, it is essential that information be provided showing the names and addresses of the parties providing the raw materials.

The United States importer does not need to present the Certificate of Origin until requested to do so by CBP. The requirement that fabric, yarn, and/or thread producers be identified in blocks 6-8 of the AGOA Certificate of Origin is based on the requirement in most AGOA preference provisions that those items must be produced in the United States and/or in one or more beneficiary countries. These requirements are specifically provided for in the AGOA which differ in this regard from the approach taken in the NAFTA. Neither the NAFTA nor its implementing legislation discusses specific intermediate processes such as these, nor do they address producer requirements specifically. For these reasons, the producers described in blocks 6-8 must be identified on the AGOA Certificate of Origin, which cannot be completed merely by including wording such as “Available to CBP upon request.”

Comment:

A commenter recommended that the instructions for completing the Certificate of Origin make clear that the producer or exporter may state “not applicable” where the information sought is not relevant for the particular preference group. This commenter stated, as an example, that blocks 6-8 are not relevant for a producer or exporter of apparel in preference group “E.”

CBP’s Response:

As in the case of any form designed to cover a variety of factual situations, it was never intended that all blocks be completed on the Certificate of Origin set forth in § 10.214. In fact, there should never be a case where all the blocks will be completed. For example, as the commenter pointed out, blocks 6-8 are not relevant to articles covered by preference group “E”

(nor are blocks 9 and 10 relevant in that case). Similarly, in the case of preference group “H,” blocks 6-9 do not need to be completed. If a block is not relevant to the article covered by the Certificate of Origin, the exporter can either leave the block blank or insert the words “not applicable” or the symbol “N/A.” CBP does not believe that it is necessary to modify the instructions for completing the Certificate of Origin to cover something that is implicit in its design and use. What is essential is to ensure that all information relevant to the article under consideration is included on the Certificate of Origin, and that is what the instructions are intended to do.

Comment:

One commenter noted that § 10.214(a) provides both that an exporter must prepare the Certificate of Origin and that, where the exporter is not the producer, the exporter may complete and sign the Certificate based upon a Certificate voluntarily provided to the exporter by the producer. In the latter case, the commenter questioned which Certificate is considered the “original” for purposes of § 10.215(a). The commenter suggested in this case that the Certificate signed by the exporter will be considered the original and that this should be clarified in the regulations.

CBP’s Response:

The basic customs statutory record keeping requirements which are contained in sections 508 and 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1508 and 1509), and the regulations implementing those statutory provisions which are set forth in Part 163 of the CBP regulations (19 CFR Part 163) are applicable to AGOA transactions in the same way that they apply to any statutory import program administered by CBP. For this reason a general statement regarding the applicability of the Part 163 provisions was included in

§ 10.216(a), in lieu of repeating portions of the Part 163 provisions in the AGOA regulations. Thus, the meaning of “original” in an AGOA Certificate of Origin context is controlled by the definition of “original” set forth in § 163.1(g). Under that definition, what is received or made by the one required to maintain the record (the U.S. importer, for example) is what is considered to be the original. As regards the suggested clarification, CBP believes that no change is necessary in this regard since the regulations, as amended by this final rule, clearly indicate who may prepare and sign a Certificate of Origin.

Comment:

A commenter noted that whereas § 10.216(b)(2) provides that the exporter or his authorized agent must have signed the Certificate, § 10.214(a) makes no reference to an authorized agent. This commenter suggested that if an authorized agent may sign the Certificate, this should also be noted in § 10.214(a).

CBP’s Response:

CBP agrees that § 10.214(a) should clarify who may prepare and sign the Certificate of Origin. As previously indicated in this comment discussion, CBP has determined that, in addition to the exporter or the exporter’s authorized agent, the producer or the producer’s authorized agent may prepare and sign the Certificate. Therefore, §§ 10.214(a), 10.214(c)(13), and 10.216(b)(2) have been changed to reflect this modification as to who may sign the Certificate. It should be noted that T.D. 03-15 modified the instructions for preparing the Certificate in § 10.214(c) by adding a new paragraph (c)(13) regarding who may sign the Certificate.

Comment:

Two commenters noted that the preference groups listed on the Certificate of Origin as

set forth in § 10.214(b) are identified by letters whereas the paragraphs setting forth the groups of eligible articles under § 10.213(a) are identified by numbers. These commenters expressed concern that this inconsistency will lead to confusion and errors in filling out the Certificate, and, therefore, they requested that the same type of identifier be used in each context. One of the commenters specifically suggested in this regard that preference group “A” should be indicated as “(1)” on the Certificate to correlate with § 10.213(a)(1), preference group “B” should be indicated as “(2)” on the Certificate to correlate with § 10.213(a)(2), and so forth.

CBP’s Response:

In T.D. 03-15, CBP adjusted the Certificate of Origin form to coordinate the relevant provision with the applicable preference and visa group.

Comment:

With reference to the requirement in § 10.216(b)(3) that the importer provide upon request an English translation of a Certificate not prepared in English, a commenter recommended that the provision be revised to require that the Certificate be completed in English or in both English and the language of the exporting country, so that the importer would be able to more readily respond with an English version when a copy of the Certificate is requested by CBP. This commenter suggested that although the practice under NAFTA has been for companies to prepare both an English version and a native language version, having this as a regulation would ensure the ready availability of translations.

CBP’s Response:

CBP does not believe that the regulatory text should be changed as suggested by this commenter. CBP notes in this regard that so long as the regulatory standard for an English language Certificate or translation is met, whatever additional procedure the exporter and U.S.

importer may choose to employ for their convenience in meeting that requirement is not appropriate for regulatory treatment.

Record Keeping Requirements

Four commenters made observations on the maintenance of records provision in § 10.216(a) and on the amendment to the (a)(1)(A) list contained in the Appendix to Part 163.

Comment:

Two commenters objected to application of the NAFTA 5-year record retention period, noting that the AGOA specifically mentions a 2-year period. One of these commenters, after noting that the AGOA regulations only need to be similar, rather than identical, in all material respects to the requirements of Article 502(1) of the NAFTA, argued that the record keeping requirements should be designed to meet the intent of Congress while placing the smallest possible administrative burden on producers, exporters, importers and CBP. Moreover, considering the requirements under the NAFTA, this commenter argued that only certain records were contemplated in the 5-year retention requirements and therefore suggested that CBP should review the specific records required under the NAFTA and stipulate exactly what must be retained to satisfy the requirements of the AGOA. This commenter suggested that the spinner's certifications of materials origin may be considered representative of the type of records that should be retained for 5 years, whereas manufacturing records should not be required beyond the statutory 2-year period.

CBP's Response:

CBP first notes that the only reference to a 2-year record retention period in the AGOA is found in section 113(a)(1)(E) which concerns the obligation of each beneficiary sub-Saharan African country to require its producers and exporters to maintain production and export records.

That exporting country context is distinct from, and therefore is not an appropriate subject for, these AGOA implementing regulations which concern U.S. import requirements. CBP further notes that Article 502(1) of the NAFTA does not mention a record retention period (that subject is addressed in Article 505 of the NAFTA which is not specifically referred to in the AGOA). Therefore, it is not the NAFTA standard that controls record retention in the United States under the AGOA. Rather, as already pointed out above, the provisions of 19 U.S.C. 1508 and 1509 and Part 163 of the CBP regulations set forth the standards for record retention in an AGOA context, including the length of time that a record must be retained. CBP believes that those statutory and regulatory provisions strike an appropriate balance, consistent with Congressional intent, between the law enforcement needs of CBP and the interest of the importing community in having the smallest possible record keeping burden.

Comment:

With regard to the amendment to the (a)(1)(A) list contained in the Appendix to Part 163, two commenters objected to the inclusion of the words “and supporting records.” These commenters noted that the (a)(1)(A) list is defined as covering documents which are “required by law or regulation for the entry of the merchandise...” (19 U.S.C. 1509(a)(1)(A)). One of these commenters suggested that in this circumstance supporting documents might include production records such as cutting or sewing tickets and argued that these may not be construed as documents required for entry and that there is nothing in the interim regulation to suggest that this is the case. The other commenter mentioned certain supporting documents referred to in § 10.217(a)(2) (that is, 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 similarly stated that these records are not required for

entry. Both commenters therefore requested elimination of the reference to supporting records.

CBP's Response:

CBP has reviewed this issue in light of the points made by these commenters and has concluded that the commenters are correct. Accordingly, the amendment to the (a)(1)(A) list in the Appendix to Part 163 has been modified in this final rule document by removing the words “and supporting records.”

It should be noted, however, that although records to support a claim for preferential treatment (other than the Certificate of Origin) are not required for the entry of the merchandise in question, they nevertheless may be records required to be maintained and made available to CBP.

Other Comments

Comment:

With reference to § 10.213(a)(1), which covers apparel articles assembled from fabrics wholly formed and cut in the United States, one commenter stated that the AGOA implementing regulations should include a definition of the expression “wholly formed and cut in the United States” that confirms that cutting fabrics to length outside the United States, incidental to the assembly process in an AGOA beneficiary country, does not adversely affect eligibility under the program. The commenter noted in this regard that the expression “wholly formed and cut in the United States” has been present in HTSUS subheading 9802.00.90, that CBP rulings (for example, HQ 559856 and HQ 561069) have confirmed that the cutting-to-length of fabric components is an operation incidental to the assembly operation and may take place in Mexico under the statutory language and that those rulings are in accord with § 10.16 of the CBP regulations which has been interpreted by CBP in numerous administrative rulings in the context

of HTSUS subheading 9802.00.80 that establish that cutting-to-length is an operation incidental to the assembly process while the cutting of garment parts according to pattern from exported material is an operation not incidental to assembly.

CBP's Response:

The issue of the extent to which cutting of fabric may be performed in a beneficiary country with respect to articles covered by paragraph (b)(1) of section 112 of the AGOA (§ 10.223(a)(1) and (a)(2) of the regulations) has already been addressed in the CBP responses to the comments regarding cutting in the United States and beneficiary countries. Based upon the statutory reference to subheading 9802.00.80, HTSUS, in paragraph (b)(1) of section 112, CBP concluded that additional cutting operations may be performed in a beneficiary country under that statutory provision only to the extent that the cutting operations are considered “incidental” to the assembly process abroad. CBP also noted in this regard that the regulations implementing subheading 9802.00.80 specify that examples of operations considered “incidental” to the assembly process include “cutting to length...of products exported in continuous lengths” (see 19 CFR 10.16(b)(6)).

Therefore, CBP agrees with the commenter that cutting fabric components to length in a beneficiary country will not adversely affect eligibility of products covered by paragraph (b)(1) of the statute and § 10.213(a)(1) and (2) of the regulations. However, CBP does not agree that a clarifying amendment to the regulations is necessary in this regard in view of the already existing regulations implementing subheading 9802.00.80, HTSUS, which include specific examples of operations which are and are not “incidental” to assembly.

Comment:

A commenter referred to the following changes made to the HTSUS by Presidential

Proclamation 7350: modification of subheading 9802.00.80 to include an exception reference for “goods imported under provisions of subchapter XIX;” inclusion of the words “[f]ree, for products described in U.S. note 7 to this subchapter” in the special rates of duty column for subheading 9802.00.80; and inclusion of a new U.S. Note 7 to Subchapter II to Chapter 98 which states, among other things, that articles otherwise eligible to enter under subheading 9802.00.80, and which satisfy the conditions set forth in U.S. Note 3 to Subchapter XIX of Chapter 98, shall not be ineligible to enter under subheading 9802.00.80. This commenter, after suggesting that the latter change recognized that an overlap exists between subheading 9802.00.80 and the Subchapter XIX provisions, stated that (1) the language of subheadings 9802.00.80 and 9802.00.90 provides for eligibility where the fabric components in whole or in part meet the three-part eligibility requirement (ready for assembly, no loss of physical identity, and nothing more than assembly), (2) CBP has additionally recognized with respect to application of subheading 9802.00.90 that further fabrication of one or more fabric components in Mexico will not preclude classification of the apparel in that subheading (see, for example, HQ 560201), and (3) in this regard, the limitation of the subheading 9802.00.80 duty exemption resulting from language in the general rates of duty column (which requires each individual component to be eligible for that component to enjoy a partial duty exemption on its cost) is not operative for the special rates of duty column. This commenter thus concluded that under the AGOA not all components need meet the three-part requirement for classification of the finished article in subheading 9802.00.80 for the article to be duty free, as long as there is compliance with the fabric and yarn origin requirements of the AGOA. The commenter ended by stating that the regulations (1) should state that fabrication of individual fabric components before assembly does not preclude eligibility as long as some components meet the requirements and (2) should

identify when the processing is sufficient to require classification in subheading 9819.11.03 rather than under subheading 9802.00.80.

CBP's Response:

As the commenter correctly notes, CBP has held in prior rulings with respect to subheading 9802.00.90, HTSUS, that the fact that every fabric component of a textile or apparel article does not satisfy one or more of the three conditions set forth in that provision (that is, “(a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process”) will not preclude the article from receiving duty-free treatment, provided other fabric components in the article satisfy those three conditions. (See, e.g., HQ 559780 dated May 19, 1997, and HQ 560201 dated May 14, 1998. The basis for these holdings is the specific wording of this provision requiring that the “fabric components, in whole or in part” meet the three conditions (emphasis added). The “in whole or in part” wording was added to subheading 9802.00.90, HTSUS, by Presidential Proclamation 6821 (published in the **Federal Register** (60 FR 47663) on September 13, 1995). Prior to the insertion of that wording in the provision, CBP had required that all fabric components satisfy the three conditions identified above.)

CBP does not agree with the commenter's contention that under the AGOA (specifically, the provision which refers to articles entered under subheading 9802.00.80, HTSUS, that is, section 112(b)(1)(A) of the statute which is reflected in § 10.213(a)(1) of the regulations) not all fabric components must satisfy the three conditions set forth in subheading 9802.00.80, HTSUS, for the articles to qualify for preferential treatment. Unlike subheading 9802.00.90, HTSUS, the

subject provision of the AGOA does not say that the fabric components may “in part” satisfy the three conditions of subheading 9802.00.80, HTSUS. CBP believes that, had Congress intended the conclusion urged by the commenter, it would have included specific wording to that effect in this provision. In the absence of that wording, CBP construes this AGOA provision as requiring that all the fabric components must meet the three conditions of the subheading. Therefore, CBP declines to amend the regulations in this regard to reflect the commenter’s position.

CBP notes that section 112(b)(1)(B) of the AGOA (which is reflected in § 10.213(a)(2) of the regulations) specifically permits certain additional processing (for example, stonewashing and garment dyeing) as an exception to the third of the three conditions under subheading 9802.00.80, HTSUS. Therefore, in the case of articles covered by section 112(b)(1)(B) and § 10.213(a)(2), all of the fabric components may be subjected to one or more of those additional processes.

CBP also does not agree that the regulations should be changed to indicate when processing would require classification in subheading 9819.11.03, HTSUS, (§ 10.213(a)(2)) rather than in subheading 9802.00.80, HTSUS, (§ 10.213(a)(1)). CBP believes that sufficient guidance is available through the specific processing exemplars in subheading 9819.11.03, HTSUS, and § 10.213(a)(2) and in the regulations interpreting subheading 9802.00.80, HTSUS, (19 CFR Sections 10.11-10.26) and in the various administrative rulings and judicial decisions regarding what processes do or do not constitute operations incidental to assembly.

Comment:

A commenter expressed agreement with the change to the § 10.212 definition of “assembled in one or more beneficiary countries” made in the correction document published in the **Federal Register** on November 9, 2000, which involved removal of the parenthetical

exception clause regarding thread, decorative embellishments, buttons, zippers, or similar components. The commenter suggested that with this change the regulations now recognize that duty-free treatment is to be accorded even to apparel exported for the addition of decorative appliques, bead effects and the like where these additions qualify as assemblies and that this is in keeping with the goal of the legislation to enhance the competitiveness of both domestic and sub-Saharan African textile industries.

CBP's Response:

CBP in this final rule document has replaced the definition of “assembled in one or beneficiary countries” with “sewn or otherwise assembled in one or more beneficiary countries” in § 10.212(q) as explained below under “Additional Changes to the Regulations.” This change in language does not change the definition which, as noted by the commenter, includes the addition of decorative embellishments, buttons, zippers or similar components where the additions qualify as assemblies.

Comment:

Three commenters suggested that either the categories of eligible products in § 10.213(a)(1) and (a)(2) or the corresponding preference groups “A” and “B” on the Certificate of Origin in § 10.214(b), or both, should be combined into one because the statute does not require this distinction and because fewer categories or groups will present fewer opportunities for error and misunderstanding. These commenters suggested in this regard that there is no reason for distinguishing between apparel that is merely assembled and apparel that is subjected to additional finishing operations. One of these commenters further noted that these products are all “807A+” type products (that is, products assembled in the region from U.S.-formed-and-cut parts from U.S.-formed yarn). This commenter suggested that since these AGOA provisions are

intended to track the benefits provided under the NAFTA Special Regime (which is covered by one HTSUS provision, that is, subheading 9802.00.90), there is no reason why a single provision cannot be provided for these AGOA products. One of these commenters also stated that the two short supply provisions in § 10.213(a) (that is, subparagraphs (8) and (9)) should be consolidated into one provision.

CBP's Response:

With the exception of preference groups “3-C” and “8-H” on the Certificate of Origin (which consolidate similar provisions), the regulatory text in § 10.213(a) and the preference groups listed on the Certificate of Origin in § 10.214(b) reflect the individual product descriptions or groupings that are contained both under section 112(b) of the Act and in the subheadings of Subchapter XIX within Chapter 98 of the HTSUS. CBP strongly believes that it is essential to have a separate regulatory provision for each statutory product category or group so that appropriate distinctions among the different categories or groups may be maintained for legal, operational and statistical purposes. Accordingly, CBP does not agree with any of the suggestions for consolidation of these categories or groups.

Discussion of Comments in Response to T.D. 03-15

General Comments:

Comment:

A commenter stated the belief that CBP's interpretation of the AGOA “is unnecessarily restrictive and at odds with the purpose of the legislation - to expand trade with countries in sub-Saharan Africa. . . . While economic conditions and infrastructure deficiencies are part of the reason, the narrow views adopted by Customs [now CBP] are a very significant contributor to this circumstance.”

CBP's Response:

The interpretations adopted by CBP with regard to the AGOA must be consistent with the language of the statute. It is CBP's desire and obligation to carry out the expressed intent of Congress as reflected by the language of the statute.

Comment:

A commenter noted that “[c]hanges to existing interim regulations for CBTPA and AGOA that address the knit-to-shape and hybrid cutting issues will have a positive and immediate impact on U.S. textile suppliers and companies in the region.”

CBP's Response:

No response necessary.

Wholly formed fabrics

Two commenters recommended amendments of the definition of “wholly formed fabrics.”

Comment:

One commenter objected to the definition of “wholly formed fabrics” stating that it is beyond what is appropriate. The commenter believes the definition includes yarn formation and requires processing to begin with polymers and fiber formation. The commenter argues that the definition is inconsistent with the definition of “wholly formed yarn” and suggests the definition be changed to simply state that “fabrics wholly formed means that the fabric has been entirely knit or woven within the United States or a beneficiary country.”

CBP's Response:

The commenter has misinterpreted the definition of “wholly formed fabric.” The

definition is not drafted to require yarn formation. It is drafted to include the formation of all types of fabrics, including knit, woven and non-woven. As non-woven fabrics are generally formed by the entanglement of fibers or filaments, the definition necessarily includes beginning with polymers, fibers and filaments in order to include these fabrics which are not produced by knitting or weaving yarns.

Comment:

One commenter agreed with the inclusion of the phrase “one or more beneficiary countries” in the definition of “wholly formed fabrics” to fully reflect the circumstances where the term “wholly formed fabrics” is used, but the commenter believes that the addition of the term “as appropriate” after “beneficiary countries” would provide clarification.

CBP's Response:

CBP disagrees with the commenter's suggestion to add “as appropriate” to the end of the definition of “wholly formed fabrics.” We do not believe it is necessary, nor would it add the clarification suggested by the commenter.

Wholly formed yarns

Comment:

While the commenter agrees with the definition of “wholly formed yarn” in the ATPDEA and believes CBP “correctly included draw-texturing in the definition of ‘wholly formed’ filament yarns,” the commenter believes that “[o]mitting this clarification from the CBTPA and AGOA regulations is inconsistent and will lead to confusion down the road.” The commenter strongly urges the same definition be reflected in the CBTPA and AGOA regulations.

CBP's Response:

As indicated above in the discussion of comments relating to wholly formed yarns in

response to T.D. 00-67, CBP has in this final rule document revised the definition of “wholly formed yarns” to clarify that the process of draw-texturing falls within the scope of “wholly formed” as it relates to yarn. CBP agrees with the commenter that the definition of “wholly formed yarns” should be changed to reflect the same definition for all the preference trade programs.

Knit-to-shape Components

Comment:

The definition of knit-to-shape components includes a requirement that a knit-to-shape component have a self-start edge. One commenter requested that CBP define this term. In addition, the commenter, citing the Informed Compliance Publication (ICP), What Every Member of the Trade Community Should Know About: Knit to Shape Apparel Products (January 1999) and Headquarters Ruling Letter 953224 of May 13, 1993, stated that knit-to-shape components have not included squares or rectangles. The commenter requests that CBP clarify that the term “shape” does not include “regular geometric shapes such as rectangles and squares.” The commenter further requests that the definition be amended to include a requirement that a component be in condition ready for assembly without further processing.

CBP's Response:

CBP agrees with the commenter that the term “self-start edge” needs to be defined. CBP has defined “self-start bottom” in the ICP cited by the commenter. Drawing from that definition, a definition for “self-start edge” has been added in § 10.212 of this final rule document as new paragraph (o). CBP also agrees with the commenter that the term “specific shape” as used in the definition of “knit-to-shape components” needs to be clarified. As a result, the definition of “knit-to-shape components” (now § 10.212(h)) has been modified in this final rule document by

the insertion of the language, “, that is, the shape or form of the component as it is used in the apparel article,” after the word “shape” and before the word “containing.” CBP has further modified the definition of “knit-to-shape components” by replacing the article “a” immediately before “self-start edge” with the words “at least one” to clarify that knit-to-shape components may contain one or more self-start edges.

CBP disagrees with the commenter's assertion that a knit-to-shape component cannot be of a square or rectangular shape for purposes of this definition. The ICP publication cited by the commenter discusses knit-to-shape components which are considered “major parts” in determining whether an apparel article is to be considered a knit-to-shape article. “Major parts,” by definition, does not include all components of a knit-to-shape article; “major parts” does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts. In that context, the ICP addresses the requisite features of a knit-to-shape front, back or sleeve panel. In other words, it addresses the requirements for a “knit-to-shape component” that is a “major part.” CBP agrees that, in that context, square or rectangular textile pieces have been rejected from consideration as “knit-to-shape” because they lacked features, such as armholes, necklines, or shaping, which made it possible to clearly identify the pieces as specific components of a garment. The definition of “knit-to-shape components” in this final rule document, however, includes all components of an apparel article, not just “major parts,” which may be knit directly into the shape in which the component is used in the apparel article. Whether a knit component is knit directly into a geometric shape such as a rectangle or square is of no consequence provided that knit component is knit directly into the shape in which it will be used in a garment and it is identifiable as a garment component.

With regard to the commenter's reliance upon HQ 953224, we believe the commenter

meant to cite to HQ 953234 which was issued on May 13, 1993, and addressed the country of origin of plastic coated fabric. However, we believe HQ 953234 does not support the commenter's position as that ruling dealt with the classification of certain woven fabric.

Finally, CBP disagrees with the suggestion by the commenter to amend the definition of “knit-to-shape components” to include a requirement that a component be in condition ready for assembly without further processing. We do not believe such a requirement is necessary. In addition, it contradicts the language in the definition which allows for minor cutting or trimming of such components.

Lesser Developed Beneficiary Countries Provision

Comment:

Section 10.213(a)(5) describes a preference available to apparel articles that are “wholly assembled, or knit-to-shape and wholly assembled, or both.” An explanation is sought as to why there is a reference to “both” in section 10.213(a)(5) because the commenter is unable to envision a circumstance where an apparel article would be both “wholly assembled” and “knit-to-shape and wholly assembled.”

CBP's Response:

The language in § 10.213(a)(5) follows the language of the statute in section 112 (c)(1)(A) of the AGOA (codified at 19 U.S.C. 3721(c)(1)(A)).

Comment:

A commenter asserts that the lesser developed country beneficiary rule is a relaxation of the more restrictive rules of the other provisions and, therefore, it should be interpreted to allow knit-to-shape components from third countries to be used in the assembly of apparel in the lesser developed beneficiary countries. The commenter posits that since Congress has not specifically

indicated that using third-country knit-to-shape components would disqualify a garment from preferential treatment, their use in the assembly of apparel articles should be allowed. The commenter requests CBP to clarify § 10.213(a)(5), by inserting the phrase “, knit to shape components,” between the words “fabric” and “or,” to indicate that third-country knit-to-shape components are allowed in the assembly of apparel provided for by that provision.

CBP's Response:

CBP does not have the authority to add the requested language which would change the scope of the provision as enacted. Only Congress may make the change the commenter seeks as the language in the regulation reflects the language in the statute which Congress passed.

The only allowance for the use of foreign (third-country) components in the production of apparel articles eligible for preferential treatment under the AGOA is found in the Special Rules in section 112(e) of the AGOA. Paragraphs (e)(1)(A) and (B) of section 112 (§ 10.213(c)(1)(i) and (c)(1)(ii) of the regulations, respectively) allow for the use of certain foreign interlinings and findings and trimmings, subject to a specified value limitation. Paragraph (e)(3) sets forth a new special rule added by the Act of 2004 which was discussed above. Under this new rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains certain specified components that fail to meet the applicable requirements set forth in section 112(b), regardless of the origin of the component (see new § 10.213(c)(1)(v) of the regulations). The specified components are: collars, cuffs, drawstrings, shoulder pads or other padding, waistbands, belt attached to the article, straps containing elastic, and elbow patches.

Comment:

A commenter asserts that, consistent with the plain language of section 112(b)(3)(B)(i) of

the AGOA (as amended by section 3108(a)(3)(B) of the Act of 2002) [now section 112(c)(1)(A)], section 10.213(a)(5) of the interim regulations should be clarified or modified to indicate that the provision “requires knit-to-shape apparel articles to be knit-to-shape and assembled in a lesser-developed beneficiary country, but does not require knit fabric components assembled in non-knit-to-shape articles to be knit in a beneficiary country.”

CBP's Response:

CBP agrees that the phrase “or knit-to-shape and wholly assembled,” refers to apparel articles. However, CBP disagrees with the commenter's conclusion with regard to knit fabric components assembled in non-knit-to-shape articles. It is assumed that the commenter is referring to knit components that have been knit-to-shape as the concern appears to be where those components are knit. CBP believes that the language of the provision (section 112(c)(1)(A) of the AGOA) must be read as a whole and in so doing, the language “regardless of the country of origin of the fabric or the yarn used to make such articles” must be considered. Congress clearly intended to allow third country fabric or yarn to be used in the production of apparel wholly assembled in lesser developed beneficiary countries. If Congress had intended to allow third-country components, whether knit-to-shape or cut to shape, it is reasonable to expect such intent would have been clearly reflected in the language of the statute as is the case of third-country fabric or yarn. No such intent is reflected in section 112(c)(1)(A) of the AGOA, although as noted above, the Special Rules in section 112(e) of the statute allow the use of certain third-country components. The commenter's effort to draw a distinction between knit-to-shape apparel and cut to shape apparel is without support in the language of the statute.

Comment:

A commenter argues that a distinction exists in § 10.213(a)(5) between knit-to-shape

apparel articles and non-knit-to-shape (cut and sew) apparel articles. Based on this belief, the commenter states that a small foreign rectangular knit component, such as a collar, cannot disqualify, from Preference Group E, a non-knit-to-shape garment that is wholly assembled in a lesser-developed beneficiary country. The argument is that in the case of non-knit-to-shape apparel, “the fabric containing minor knit rectangular components such as collars, cuffs and waistbands, may be knit in any country.” However, for “knit-to-shape apparel the components must be knit in a lesser-developed beneficiary country.” The commenter believes that if CBP “interprets section 3108(a)(3)(B) of the Trade Act of 2002 to prevent preferential treatment for a simple make garment, like a polo shirt, that is wholly assembled in a lesser-developed beneficiary country from a full package of third country fabric, including fabric containing rectangular components for the collars and cuffs, it strains the bounds of reasonable effectuation of preferential access policy and contradicts legislative intent.”

CBP's Response:

The response to the previous comment is equally applicable to this comment. CBP finds no basis in the language of the lesser developed beneficiary countries provision to justify a distinction between knit-to-shape and other apparel articles.

Comment:

Only knit-to-shape apparel articles are required to be knit-to-shape in a lesser developed beneficiary country under the terms of §10.213(a)(5). Knit-to-shape apparel articles are defined as apparel articles “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.” “Major parts” are defined as “integral components of a good” but not including “collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.”

19 CFR § 102.21(a)(4); see also § 10.212(k). Based on this reasoning, a commenter asserts that excluded from the definition of “major parts” are the types of components that §10.213(a)(5) should not require to be knit-to-shape in a beneficiary country. Thus, the commenter seeks modification of §10.213(a)(5) by the addition of a sentence at the end that states, “Minor components of apparel articles that are not knit-to-shape articles may be assembled into such articles regardless [of] their origin and regardless [of] whether they are knit-to-shape components.” The commenter also seeks the addition of the definition of “major parts” from § 102.21 or a cross-reference to the definition in § 102.21.

CBP's Response:

The commenter is using the definition of a knit-to-shape apparel article to argue that Congress must have meant that only “major parts” need be knit-to-shape in the lesser developed beneficiary sub-Saharan countries to be eligible to receive preferential treatment under the AGOA lesser developed beneficiary countries provision. The commenter asserts that in the case of knit-to-shape apparel articles, it should be permissible to source “minor components” which are not considered in determining whether an apparel article is knit-to-shape from third countries. In making this argument, the commenter has ignored the language in section 112(c)(1)(A) of the AGOA which states, “regardless of the country of origin of the fabric or yarn.” It is this phrase which is key to CBP's position that, except as expressly permitted by the Special Rules in section 112(e) of the AGOA, third-country components, whether knit to shape or cut to shape, may not be used in the assembly of apparel articles under the lesser developed beneficiary countries provision.

The sentence which the commenter requests be added to § 10.213(a)(5) cannot be added as it goes beyond an interpretation of the language as enacted by Congress. The addition of such

a statement would modify the scope of the provision and CBP does not have the authority to take such action.

Comment:

“Even if the reference to ‘components’ in section 3108(a)(3) of the Act of 2002 can be read into section 3108(a)(3)(B) setting forth the special rules for lesser-developed beneficiary countries, . . . , the term can only be understood to refer to the types of knit-to-shape components that render a garment a knit-to-shape garment as described in What Every Member of the Trade Community Should Know About Knit to Shape Apparel Products. The term as used does not apply to all components that may be classifiable as knit-to-shape garment parts.” The commenter believes that based on CBP's interpretation of knit-to-shape apparel under 19 U.S.C. 3592 (rules of origin) and the presumption that Congress was aware of CBP's regulations and other administrative interpretations with respect to knit-to-shape apparel, “Congress’ reference to knit-to-shape components in the amended section [3108] should be understood to only refer to those knit-to-shape components which render a garment a knit-to-shape garment. No other components need meet the requirement that they be knit in a lesser-developed beneficiary country.”

Based on this line of reasoning, the commenter argues that even if collars are knit-to-shape components, they are not within the scope of the knit-to-shape components that must be knit in a lesser-developed beneficiary country under section 112(b)(3)(B)(i) of the AGOA, as amended by section 3108(a)(3)(B) of the Act of 2002 [now section 112(c)(1)(A)]. The commenter asserts that there is an interpretative opportunity for CBP to allow preferential treatment under Preference Group E “for (i) non-knit-to-shape garments wholly assembled in lesser-developed beneficiary countries from fabric and from knit fabric containing square or

rectangular components of any origin, and (ii) knit-to-shape garments wholly assembled in lesser-developed beneficiary countries from components knit-to-shape in one or more lesser-developed beneficiary countries regardless the origin of the yarn.” [Emphasis added.]

CBP's Response:

The commenter's argument with regard to 19 U.S.C. 3592 (rules of origin for textiles and apparel) is misplaced. The AGOA is not based on the rules of origin for textile and apparel goods in part 102 of the CBP regulations; it is a program which is based on meeting the specific production requirements detailed by Congress in the various provisions of the AGOA.

In the case of the lesser developed beneficiary countries, Congress specified that the apparel must be “wholly assembled, or knit-to-shape and wholly assembled, or both.” In addition to specifying these requirements, Congress allowed the use of fabric or yarn in the production of apparel under this provision “regardless of the country of origin.” If Congress had intended the allowance of foreign-sourced (third-country) components (beyond that permitted by the Special Rules in section 112(e) of the AGOA), be they knit-to-shape or cut-to-shape, Congress would have so specified in this provision or Congress could have merely required that apparel be wholly assembled without specifically addressing the source of fabric and yarn.

The commenter, in this instance, is attempting to limit the meaning of “knit-to-shape components” based on the definition of “knit-to-shape” in the CBP regulations for determining the country of origin of textile goods (19 CFR 102.21). The commenter asks CBP to accept the assertion that Congress only meant to address those knit-to-shape components that are considered in determining whether a garment is knit-to-shape, i.e. “major parts,” in inserting the phrase “knit-to-shape and wholly assembled” in the rule for lesser developed beneficiary

countries. Even if CBP were to accept this assertion (which CBP does not), the language of the provision does not support the commenter's contention that other knit-to-shape components may be of third-country origin. The commenter suggests that CBP may interpret the rule for lesser developed beneficiary countries to allow for the inclusion of “knit fabric containing square or rectangular components of any origin” in the case of cut-to-shape apparel. The language of the provision does not support the proposition that third-country components (other than those specified in the Special Rules), be they knit-to-shape or cut-to-shape, are allowed under the rule for lesser developed beneficiary countries. Nor is there a basis in the language of the provision to support the commenter's assertion that knit-to-shape garments and cut-to-shape garments should be treated differently with regard to an allowance for third-country components.

Comment:

A commenter asserts that “[f]abric comprising simple rectangular knit components, like polo shirt collars, is not knit-to-shape components as that term has previously been defined by CBP, and it is not classifiable as such under the HTSUS.” The commenter looks to the Informed Compliance Publication (ICP), What Every Member of the Trade Community Should Know About Knit to Shape Apparel Products for a discussion of when a component is considered to be “knit-to-shape.” The commenter admits that “Customs never applied these rules [for determining if a component is knit-to-shape] to components such as collars, cuffs and waistbands, because such components are excluded altogether from consideration in determining whether a garment is a knit-to-shape garment.” The commenter further argues that “long rolls of knit fabric that is the size and shape of waistbands or cuffs but for cutting to length” are fabric. In furtherance of this position, the commenter states that simple rectangular or square components are not “made up” articles within the meaning of Note 7, Section XI, HTSUS. In

addition, the commenter believes the interim regulations definition of “knit-to-shape components” is too broad and vague.

CBP's Response:

With regard to the definition of knit-to-shape components as that term has been applied in the past by CBP, the commenter refers to the ICP, What Every Member of the Trade Community Should Know About Knit to Shape Apparel Products, to support the argument that a square or rectangular panel is not knit to shape. However, the commenter acknowledges that the “rules” regarding knit-to-shape components discussed in the ICP have never been applied to collars, cuffs, or waistbands. This is because the ICP is devoted to a discussion of knit-to-shape panels that are “major parts” of knit-to-shape apparel. The context in which the knit rectangular or square collar, cuff and waistband components have been examined under the AGOA is quite different than the focus of the ICP. The issue in the AGOA has been whether the knit rectangular or square collar, cuff and waistband components are components or fabric for purposes of determining a garment's eligibility under a provision that allows for the use of fabric or yarn without regard to origin.

The commenter cites to Note 7, Section XI, HTSUS, and claims that simple rectangular or square components are not “made up” articles as defined by that note. The commenter is correct, but only in part. Note 7 defines “made up”, in pertinent part, as “(a) Cut otherwise than into squares or rectangles;” and “(f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.” Rectangular or square components that are cut from larger pieces of fabric are, as the commenter pointed out, not “made up” articles as defined by Note 7. However, with regard to components such as collars, cuffs, and waistbands which may be knit-to-shape and whose shape happens to be rectangular, such components would

fall within the language of Note 7(f) and thus be considered “made up.”

Generally, collars which are knit-to-shape are knit in a series of collars separated by dividing threads or lines of demarcation. Thus, CBP must disagree with the commenter with regard to “fabric” which is knit with lines of demarcation to indicate the length and width of individual items which contain a self-start edge and are readily identifiable as garment components. Even if these individual items are rectangular in shape and require minor cutting or trimming before use, provided they have the essential character of the finished component, *i.e.*, they are clearly recognizable as the component, such as collars, following General Rule of Interpretation 2(a) of the HTSUS, they would be classified as the finished good, that is, as garment parts. CBP has issued a number of rulings regarding the classification of such garment parts or components. See New York Ruling Letter (NY) 813955 of September 6, 1995 (classification in subheading 6117.90, HTSUS (as parts of garments), of collars and cuffs knitted into rolls in which the collars and cuffs are connected with separating threads creating lines of demarcation), NY B80190 of December 9, 1996 (classification of collars and cuffs knitted into rolls in which the collars and cuffs are connected with separating threads creating lines of demarcation), NY F80642 of January 4, 2000 (classification of collars and cuffs knitted into rolls in which the collars and cuffs are connected with separating threads creating lines of demarcation), and HQ 560304 of April 25, 1997 (country of origin of collars and waistbands created by knitting a “fabric” consisting of collars and waistbands connected by a melting thread for separation into individual components by steaming).

As to the commenter's contention with regard to long rolls of knit fabric which are the size and shape of waistbands or cuffs but are to be cut to length, CBP agrees that such rolls remain fabric. Although strips of material may be used to produce any number of cuffs or

waistbands or collars, if the quantity and identity of the components cannot be discerned from an examination of the material, CBP considers the material to be fabric. Support for this view may be found in Coraggio Design, Inc. v. United States, 12 CIT 143 (1988), in which the Court of International Trade, after discussing several cases involving the issue of material versus article or part, stated “material cannot be classified as more than woven fabric when it is not processed to the point where the individual ‘article’ is identifiable with certainty, not cut to specific lengths or marked for cutting, and not advanced to a point where significant processing steps no longer remain.” 12 CIT 143, 147.

As for the definition of “knit-to-shape components,” CBP in this final rule document is changing the definition, as already discussed, to add clarity.

Comment:

According to a commenter, CBP’s position that collars and cuffs used in the production of articles under the lesser developed beneficiary countries provision “are not fabric, but rather ‘fabric components’. . . . is a distinction without a difference and these components should be properly characterized as fabric.” The commenter states that “in past rulings, the Customs Service has characterized knit fabric components as ‘fabric.’” The commenter asserts that these fabric components are an integral part of the garment and are not themselves knit-to-shape and to adopt such an interpretation would not conflict with Congressional intent. This commenter requests that § 10.213(b)(5) of the regulations be clarified to allow the use of third country formed collars and cuffs.

CBP's Response:

CBP believes that the commenter’s concerns have effectively been rendered moot by the addition of the new special rule in section 112(e)(3) of the AGOA by the Act of 2004, as

discussed above. As applied to this commenter's specific concerns, this statutory change permits the use of collars and cuffs (cut or knit-to-shape) made in a non-lesser developed beneficiary country in the construction of apparel articles covered by section 112(c)(1)(A) of the AGOA (§ 10.213(b)(5)).

Comment:

Two commenters request that the regulations be clarified with regard to the eligibility under AGOA of garments knit-to-shape and assembled in a lesser developed beneficiary country with collars and cuffs knit in a non-lesser developed beneficiary country. These commenters disagree with CBP's interpretation that collars and cuffs must be knit-to-shape in a lesser developed beneficiary country in order for the apparel to qualify. The commenters believe apparel should still qualify for preferential treatment under the AGOA, provided the knit components which are knit-to-shape in a non-lesser developed beneficiary country otherwise meet the AGOA eligibility requirements.

CBP's Response:

Again, the commenters' concerns have been rendered moot by the new special rule in section 112(e)(3) of the AGOA and § 10.213(c)(1)(v) of the regulations.

Findings and Trimmings

Comment:

One commenter stated that the definition of the "cost" of components and the "value" of findings and trimmings and interlinings set forth in §10.213(b)(2) of the Interim Regulations "incorporate a bias that could overstate the relative cost of trim and findings" in comparison to the cost of the other components of the article. The commenter pointed out that in the "usual

circumstance,” components subject to the findings and trimmings exception would originate in a non-AGOA beneficiary country while the other components of the article would be produced at the site of manufacture of the article in an AGOA beneficiary country. Thus, by applying an f.o.b. port of exportation standard, the value of foreign findings and trimmings would include the cost of transportation within the country of origin, but the cost of the other components would include little or no transportation costs. The commenter suggests using an ex-factory cost or value in lieu of the f.o.b port of exportation standard provided for in §10.213(b)(2) of the Interim Regulations.

CBP's Response:

CBP agrees with the commenter and believes that the definition of “cost” and “value” in re-designated § 10.213(c)(2) (formerly § 10.213(b)(2)) also has the potential for overstating the “value” of foreign interlinings in comparison to the “cost” of the components of the assembled article for the same reason cited by the commenter. CBP also agrees that the use of an ex-factory standard in lieu of the f.o.b. port of exportation standard would resolve the potential problem by eliminating transportation costs from the comparison between the “value” of foreign findings and trimmings and/or foreign interlinings and the “cost” of the components of the assembled article. Therefore, CBP has revised re-designated § 10.213(c)(2) in this final rule document to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard.

Post-Assembly Processing

Comment:

One commenter suggested that the regulations make it clear that post-assembly processes (such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing) do not disqualify an apparel article for

preferential treatment when all other criteria for eligibility are met. The commenter noted that including such language in the AGOA regulations would be consistent with similar provisions currently found in the regulations relating to textile and apparel articles under the United States-Caribbean Basin Trade Partnership Act (CBTPA) (see §10.223(b)(2)) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (see §10.243(b)(2)).

CBP's Response:

Nearly identical comments were previously received in response to the initial AGOA interim regulations adopted in T.D. 00-67. An analysis of these previous comments relating to post-assembly processing is set forth above in this final rule document in the discussion of comments on post-assembly processing received in response to T.D. 00-67.

Short Supply

Comment:

A commenter strongly disagreed with the language in §10.213(a)(8) that excludes brassieres from receiving preferential treatment under this short supply provision. The commenter recommended that the words “, other than brassieres classifiable under subheading 6212.10, HTSUS,” (which were added to § 10.213(a)(8) by T.D. 03-15) be deleted. CBP concluded in T.D. 03-15 that Congress intended to exclude brassieres from the AGOA short supply provision because the CBTPA and the ATPDEA each contained separate provisions specific to preferential treatment for brassieres and as the short supply language in the three trade preference programs are substantially similar, if the short supply provisions in CBTPA and ATPDEA do not include brassieres, then neither does AGOA's short supply provision. The commenter stated that, as a result of amendments made by the Act of 2002, language was

included in the CBTPA and ATPDEA preference provisions covering brassieres that specifically envisions brassieres being imported under the short supply provisions in each of those two trade preference programs. The commenter stated that this statutory language stands in sharp contrast to CBP's view that brassieres are not eligible for short supply treatment in those trade programs.

CBP's response:

As CBP stated in the discussion of the interim amendments in the preamble of T.D. 03-15, § 10.223(a)(7) provides for apparel articles constructed of fabrics or yarns which for purposes of Annex 401 of the NAFTA are deemed to be in "short supply." There is no list of "short supply" fabrics or yarns for purposes of the NAFTA. The determination of these "short supply" fabrics or yarns is based upon the various provisions of the NAFTA and whether, under the NAFTA, for the particular apparel article at issue, certain fabrics or yarns may be sourced from outside the NAFTA parties for use in the production of an "originating" good. If the sourcing of certain fabrics or yarns outside the NAFTA parties is allowed, then those fabrics or yarns are deemed to be in "short supply" for that apparel article.

In the case of brassieres under the NAFTA, no restrictions or limitations apply regarding fabrics or yarns. Therefore, fabrics and yarns may be obtained from anywhere. The only requirement under Annex 401 is that articles classified in subheading 6212.10, HTSUS, must be "both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties." CBP believes that the absence of NAFTA restrictions on fabrics or yarns used in the production of brassieres, does not mean that all fabrics or yarns used for this purpose must be in "short supply." CBP submits that applying the short supply provision to a product where the NAFTA rule makes no mention of excluded materials would render meaningless the

specific provisions on brassieres in the CBTPA and ATPDEA. Thus, CBP remains of the view that it was appropriate to amend § 10.213(a)(8) to clarify that brassieres are not covered by this provision.

Additionally, the commenter pointed out that, as a result of amendments made by the Act of 2002, language was added to the preferential provisions specifically covering brassieres in the CBTPA and ATPDEA which excluded articles covered by certain other provisions in those programs. According to the commenter, the exception language added by Congress to the brassiere provisions clearly envisioned brassieres being imported under these excluded provisions, including the short supply provisions. In CBP's opinion, the addition of this exception language should not be interpreted as indicating that brasseries are eligible under any or all of the excepted provisions. This clarifying language merely states that any brassieres classified in one of the excepted provisions would not be considered in determining eligibility under the specific CBTPA and ATPDEA brassiere provisions.

Certificate of Origin

Comment:

A commenter expressed agreement with the removal of the words “in a beneficiary country” from § 10.217(a)(2) and (a)(3) in recognition of the fact “that many companies do not necessarily keep the verification documentation in the factory that performed the sewing.” The commenter also recommended that the Certificate of Origin be further simplified into one form to serve the AGOA, the CBTPA and the ATPDEA programs because the requirements for these programs are the same. The commenter also suggested that the exporter be given the option of inserting “available upon request” in the three blocks on the Certificate in which the names and

addresses of the producers of the fabric, yarn and thread are to be provided.

CBP's Response:

CBP would certainly be open to any suggestions concerning the simplification of the Certificate of Origin. However, developing one form to accommodate AGOA, CBTPA and ATPDEA would result in the form becoming substantially more complex, especially for the exporter who is required to complete the form and is responsible for ensuring that the information is accurate. Although the textile and apparel provisions in the three programs are substantially similar, there are sufficient differences in the preferential groupings and requirements among the programs to present significant obstacles to the creation of a common certificate.

With regard to the commenter's recommendation that CBP accept "available upon request" in the blocks on the Certificate where the names and addresses of the yarn, fabric and thread suppliers are to be provided, CBP notes that the same suggestion previously was made by several commenters in response to T.D. 00-67. CBP's response to that suggestion is set forth above in the discussion of comments received in response to T.D. 00-67 (under the heading "Certificate of Origin").

Other issues

Comment:

A commenter recommends a change in the language in § 10.213(a)(1) and (a)(2) to add the phrase "or both" before the parenthetical. The commenter believes it will clarify that garments using a combination of knit-to-shape components and cut fabric components are allowed.

CBP's Response:

The commenter's concerns have been addressed by an amendment to section 112(b)(1) of the AGOA by the Act of 2004. Accordingly, as discussed previously, CBP has in this final rule document amended § 10.213(a)(1) and (a)(2) by adding the words "or both" immediately before the parenthetical matter.

Comment:

A commenter recommends changing the language in § 10.213(a)(4) "from yarns originating either in the United States or one or more beneficiary countries" to "from yarns originating in any combination of the United States or one or more beneficiary countries." The commenter believes this will clarify that a combination of U.S. and sub-Saharan African yarns is allowed in the production of fabric or knit-to-shape components.

CBP's Response:

Again, the commenter's concerns have been addressed by an amendment to section 112(b)(3) of the AGOA by the Act of 2004. As amended in this final rule document, § 10.213(a)(4) now reads, in pertinent part: "...from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both..." (Emphasis added.)

Comment:

A commenter requested that the language, "or any combination of the above fabric formation or knit to shape operations" be added immediately before the "subject to the applicable quantitative limit" language in § 10.213(a)(4). The commenter believes this will clarify that cut fabric components and knit-to-shape components may be combined.

CBP's Response:

The language set forth in § 10.213(a)(4) is consistent with the statutory language in section 112(b)(3) of the AGOA. In addition, the suggested change is unnecessary as CBP construes the word “or” between “fabric wholly formed in one or more beneficiary countries” and “components knit-to-shape in one or more beneficiary countries” in the context in which it is used in § 10.213(a)(4) to mean “and/or.”

Comment:

A commenter proposed that CBP clarify various hybrid operations by the addition of a “global hybrid phrase”, which may appear as a new special rule in § 10.213(b)(1) [re-designated in this document as § 10.213(c)(1)]. The rule would provide that an article otherwise eligible for preferential treatment will not be ineligible for that treatment because it contains: “(v) Fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1).”

According to the commenter, the insertion of this new provision in the regulations will ensure that the inclusion of United States components in a garment will not render the garment ineligible for duty benefits. The commenter also states that the inclusion of such a provision is consistent with pending clarifying changes that Congress is considering, which will provide further guidance as to original congressional intent.

CBP’s Response:

The commenter’s concerns were partially addressed by an amendment to section 112(b)(3) of the AGOA made by the Act of 2004 which added the words “whether or not the apparel articles are also made from any of the fabrics, fabric components formed , or components knit-to-shape described in paragraph (1) or (2)” of section 112(b). A comparable change has been made in this document to § 10.213(a)(4). However, beyond this change, CBP is without

authority to add the requested new special rule in the regulations as it would change the scope of certain of the statutory preferential groupings.

Additional Changes to the CBP Regulations

In addition to the regulatory changes identified and discussed above in connection with (1) the statutory changes to the AGOA made by section 7 of the Act of 2004 and section 6002 of the Act of 2006, and (2) the discussion of public comments in response to T.D. 00-67 and T.D. 03-15, the regulatory texts set forth below incorporate the following additional changes which CBP believes are necessary based on further internal review of the interim regulatory texts:

1. As a result of changes to the AGOA made by section 3108(a) of the Act of 2002, T.D. 03-15 amended paragraphs (a)(1), (a)(2), and (a)(3) of interim §§ 10.213 (among other changes to the interim regulations) to insert the words “sewn or otherwise” immediately before the words “assembled in one or more beneficiary countries.” In addition, a new paragraph (a)(11) was added to § 10.213 by T.D. 03-15 to reflect the addition of new paragraph (b)(7) to section 112 of the AGOA by the Act of 2002. The words “sewn or otherwise assembled in one or more beneficiary countries” appear in § 10.213(a)(11) as well. As a result of these changes, the definition of “assembled in one or more beneficiary countries” in interim § 10.212 has been replaced by a definition of “sewn or otherwise assembled in one or more beneficiary countries” (now § 10.212(q)). The substance of the definition has not changed.

2. CBP has determined that the definition of “foreign” as set forth in interim § 10.212 could cause some confusion and might lead to anomalous and unintended results in certain circumstances. That definition (which has relevance only in the context of the findings, trimmings and interlinings provisions of re-designated § 10.213(c)) in the interim texts simply reads “of a country other than the United States or a beneficiary country.” However, because the

various textile and apparel articles to which preferential treatment applies are described in § 10.213(a) with reference to specific production processes in the case of yarns, fabrics and components that must take place in the United States or in a beneficiary country (or in certain instances, in a former beneficiary country) or both, more is required than that the yarn or fabric or component be “of” (that is, have its origin in) the United States or a beneficiary country. For example, § 10.213(a)(1) refers to articles “sewn or otherwise assembled” in one or more beneficiary countries from “fabrics wholly formed and cut” in the United States from “yarns wholly formed” in the United States. A fabric that was wholly formed in the United States but from yarns formed outside the United States would not meet the § 10.213(a)(1) standard and also would not be considered “foreign” under the interim definition because it is “of” (that is, it has its origin in) the United States by virtue of its having been formed in the United States. Therefore, that fabric could not be present in the article under the finding, trimming or interlining rule exception; consequently, even if all of the other fabric in the article was wholly formed and cut in the United States from yarns wholly formed in the United States and the article was assembled in a beneficiary country, the assembled article would not qualify for preferential treatment. On the other hand, a fabric formed outside the United States or the AGOA region, if used as a finding, trimming or interlining within the 25 percent limit, would not disqualify the article. Thus, under the interim definition of “foreign,” U.S. and beneficiary country textile materials could be at a disadvantage vis-a-vis materials from outside the United States and the AGOA region, contrary to the overall thrust of the AGOA program as discussed in the comment discussion set forth above in this document. CBP believes that the interim definition was appropriate in the case of non-textile findings and trimmings. However, in the case of textile findings, trimmings and interlinings the concept of “foreign” logically only has relevance in the

context of an exception to the production standards that apply to articles eligible for preferential treatment. Accordingly, the definition of “foreign” has been replaced by a definition of “foreign origin” in § 10.212(e) to address these concerns.

3. Section 10.213(a)(6) includes a reference to subheading 6110.10, HTSUS, which has been replaced by subheading 6110.12, HTSUS. Accordingly, the reference in § 10.213(a)(6) to subheading 6110.10 has been replaced by a reference to subheading 6110.12.

4. CBP has determined that the producer or the producer’s authorized agent having knowledge of the relevant facts should be permitted to sign the Certificate of Origin in addition to the exporter or the exporter’s authorized agent. The producer clearly is in the best position to attest to the accuracy of the information set forth in the Certificate. Therefore, §§ 10.214(a), 10.214(c)(13), and 10.216(b)(2) have been changed to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter’s or producer’s authorized agent having knowledge of the relevant facts. CBP notes that this change is consistent with changes to the implementing regulations under the Caribbean Basin Trade Partnership Act (CBTPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA) and thus brings uniformity to the three programs in this regard.

5. References to “Customs” within the regulatory text in §§ 10.214, 10.215, 10.216, and 10.217 have been changed to “CBP.”

6. Several numerical or alphabetical paragraph designations or other references within regulatory text in §§ 10.212, 10.213, 10.214, 10.216, and 10.217 have been changed to conform to additions or other changes to the regulatory texts discussed above.

7. In § 178.2, the table has been amended by adding a listing for §§ 10.214-10.216 to provide the Office of Management and Budget (OMB) control number for the collection of

information in §§ 10.214-10.216.

Conclusion

Accordingly, based on the analysis of comments received as set forth above and the additional considerations discussed above, CBP is adopting as a final rule the interim regulations initially published in T.D. 00-67 and later amended in T.D. 03-15 with certain changes as discussed above and as set forth below. The following is a comprehensive listing of all of the changes made to the interim regulatory texts by CBP in this final rule document:

1. In §10.178a, paragraphs (d)(2) and (d)(4)(ii) have been revised to provide for the inclusion of the cost or value of materials produced in “former beneficiary sub-Saharan African countries” toward meeting the GSP 35% value-content requirement, and a new paragraph (d)(5) has been added to define “former beneficiary sub-Saharan African country;”

2. In § 10.212:

a. The definition of “apparel articles” (now paragraph (a)) has been revised to delete heading “6503”, to replace the reference to subheading “6406.99” of the HTSUS with a reference to subheading “6406.90.15”, and to replace the reference to subheading “6505.90” with a reference to subheadings “6505.00.02-6505.00.90”;

b. The definition of “assembled in one or more beneficiary countries” has been replaced by a definition of “sewn or otherwise assembled in one or more beneficiary countries” (now paragraph (q));

c. The definition of “cut in one or more beneficiary countries” (now paragraph (c)) has been revised to add the words “or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to the cutting of fabric and final assembly of the article in one or more beneficiary countries, or both;”

- d. A definition of “ethnic printed fabric” has been added as new paragraph (d);
 - e. The definition of “foreign” has been replaced by a definition of “foreign origin” (now paragraph (e));
 - f. A definition of “former beneficiary country” has been added as new paragraph (f);
 - g. The definition of “knit-to-shape components” (now paragraph (i)) has been modified to clarify the words “specific shape” and to replace the article “a” immediately before “self-start edge” with the words “at least one” to clarify that knit-to-shape components may contain one or more self-start edges;
 - h. A definition of “lesser developed beneficiary country” has been added as new paragraph (j);
 - i. A definition of “self-start edge” has been added as new paragraph (o);
 - j. A definition of “sewing thread” has been added as new paragraph (p);
 - k. The definition of “wholly formed fabrics” (now paragraph (s)) has been modified to clarify that fabric formation does not encompass dyeing, printing and finishing operations; and
 - l. The definition of “wholly formed yarns” (now paragraph (u)) has been revised to clarify that draw-texturing to fully orient a filament falls within the scope of “wholly formed” as it relates to yarn while dyeing, printing, and finishing operations do not;
3. In § 10.213, paragraphs (a)(1) and (a)(2) have been revised to include the words “or both” immediately before the parenthetical matter to clarify that the described apparel articles may be made both from fabrics wholly formed and cut in the United States and from

components knit-to-shape in the United States;

4. In § 10.213, paragraphs (a)(3) and (a)(11) have been modified to insert the word “sewing” before the word “thread;”

5. In § 10.213, paragraph (a)(4) has been revised to replace the words “either in the United States or one or more beneficiary countries” each place they appear with the words “in the United States or one or more beneficiary countries or former beneficiary countries, or both,” and to insert the words “whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), paragraph (a)(2) or paragraph (a)(3) of this section (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), paragraph (a)(2), or paragraph (a)(3) of this section),” immediately before the words “subject to;”

6. In § 10.213, paragraph (a)(6) has been revised to replace the reference to “subheading 6110.10 of the HTSUS” with “subheading 6110.12 of the HTSUS;”

7. In § 10.213, paragraph (a)(8) has been modified to remove the words “from fabrics or yarn that is not formed in the United States or a beneficiary country;”

8. In § 10.213, paragraph (a)(10) has been modified to add a reference to “ethnic printed fabric;”

9. In § 10.213, paragraph (a)(11) has been revised to add references to “former beneficiary countries;”

10. In § 10.213, a new paragraph (a)(12) has been added to include preferential treatment for “[t]extile and textile articles classifiable under Chapters 50 through 60 or Chapter 63 of the HTSUS that are products of a lesser developed beneficiary country and are wholly formed in one

or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries;”

11. In § 10.213, a new paragraph (b) has been added (with paragraphs (b) and (c) of the interim regulations re-designated as (c) and (d)) to provide:

a. In paragraph (b)(1)), in part, that while dyeing, printing, and finishing operations are not part of the fabric, component, or yarn formation process, those operations are only permissible if performed in the United States or in a beneficiary country; and

b. In paragraph (b)(2)), in part, that articles otherwise entitled to preferential treatment under the AGOA will not be disqualified from receiving that treatment because they undergo post-assembly operations in the United States or in one or more beneficiary countries;

12. In § 10.213, re-designated paragraph (c)(1)(iv) (formerly paragraph (b)(1)(iv)) has been modified to add a reference to “former beneficiary countries” and to increase the applicable de minimis percentage from 7 to 10 percent;

13. In § 10.213, re-designated paragraph (c) (formerly paragraph (b)) has been revised to add a new paragraph (c)(1)(v) that sets forth a new special rule regarding certain specified components;

14. In § 10.213, re-designated paragraph (c)(2) (formerly paragraph (b)(2)) has been modified to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard;

15. In § 10.214, paragraphs (a), (b)(2), and (c)(13) have been revised to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;

16. In § 10.214, the preference group descriptions on the Certificate of Origin set forth in paragraph (b) have been revised, as appropriate, to reflect the changes and additions made to the textile and apparel product descriptions in paragraphs (a)(1), (a)(2), (a)(4), (a)(8), (a)(10), (a)(11), and (a)(12) of § 10.213;

17. In § 10.214, the instructions for the completion of the Certificate of Origin set forth in paragraph (c) have been revised, as appropriate, to reflect the changes made to the Certificate;

18. In §§ 10.214, 10.215, 10.216, and 10.217, references to “Customs” have been changed to “CBP;”

19. In §§ 10.212, 10.213, 10.214, 10.216, and 10.217, certain numerical or alphabetical paragraph designations or other references have been changed to conform to additions or other changes to the regulatory texts discussed above;

20. In the Appendix to Part 163, the reference to the “AGOA Textile Certificate of Origin and supporting records” in the “(a)(1)(A)” list has been modified by deleting the words “and supporting records;” and

21. In § 178.2, the table has been modified to provide the OMB control number for the collection of information in §§ 10.214 through 10.216.

In view of the multiple changes throughout the AGOA textile and apparel regulatory provisions contained in §§ 10.211 through 10.217, those provisions are revised in their entirety in this final rule document.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches

that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866 as it is not likely to have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order. Accordingly, OMB has not reviewed this regulation.

Regulatory Flexibility Act

As set forth in the preamble of this final rule document, the regulations to implement the trade benefits for sub-Saharan Africa contained in the AGOA as well as certain changes to the GSP statute were previously published in T.D. 00-67 and T.D. 03-15 as interim regulations. Those interim regulations provided trade benefits to the importing public, in some cases implemented direct statutory mandates, and were necessary to carry out the preferential treatment and U.S. tariff changes proclaimed by the President under the AGOA. Pursuant to the provisions of 5 U.S.C. 553(b)(B), CBP issued the regulations as interim rules because it had determined that prior public notice and comment procedures on these regulations were unnecessary and contrary to the public interest. For these reasons, pursuant to the provisions of

5 U.S.C. 553(d)(1) and (3), CBP also found that there was good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et.seq.) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0082. The collection of information in this final rule is in sections 10.214, 10.215, and 10.216. This information is used by CBP to determine whether textile and apparel articles imported from designated beneficiary sub-Saharan African countries are entitled to duty-free entry under the African Growth and Opportunity Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average number of respondents filing annually under AGOA is 210, with each respondent filing an average of 107 AGOA claims per year for an aggregate total of 22,470 claims. The average time to complete each claim is 20 minutes which results in an annual burden of 7,640 hours for this collection of information. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Signing Authority

This final rule is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Generalized System of Preferences, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

Accordingly, the interim rule amending Parts 10 and 163 of the CBP regulations (19 CFR Parts 10 and 163), which was published at 65 FR 59668-59681 on October 5, 2000, corrected at 65 FR 67260 on November 9, 2000, and further amended at 68 FR 13820-13827 on March 21, 2003, is adopted as a final rule with certain changes as discussed above and set forth below. In addition, Part 178 of the CBP regulations (19 CFR Part 178) is amended as discussed above and set forth below.

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

1. The general authority citation for Part 10 and the specific authority for §§ 10.171 through 10.178a and §§ 10.211 through 10.217 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United

States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 et seq.;

* * * * *

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

* * * * *

2. In §10.178a, paragraphs (d)(2) and (d)(4)(ii) are revised and paragraph (d)(5) is added to read as follows:

10.178a Special duty-free treatment for sub-Saharan African countries

* * * * *

(d) * * *

(2) In the GSP declaration set forth in § 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, a former beneficiary sub-Saharan African country, or the U.S.,”

* * * * *

(4) * * *

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country or former beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(5) As used in this paragraph, the term “former beneficiary sub-Saharan African country” means a country that, after being designated by the President as a beneficiary

sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a free trade agreement with the United States.

* * * * *

3. Subpart D is revised to read as follows:

Subpart D—Textile and Apparel Articles under the African Growth and Opportunity Act

Sec.

10.211 Applicability.

10.212 Definitions.

10.213 Articles eligible for preferential treatment.

10.214 Certificate of Origin.

10.215 Filing of claim for preferential treatment.

10.216 Maintenance of records and submission of Certificate by importer.

10.217 Verification and justification of claim for preferential treatment.

§ 10.211 Applicability.

Title I of Public Law 106-200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211-10.217 of this part set forth the legal requirements and procedures that apply for purposes of extending preferential treatment pursuant to section 112.

§ 10.212 Definitions.

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

(a) Apparel articles. “Apparel articles” means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6504 and subheadings 6406.90.15 and 6505.00.02-6505.00.90, of the

HTSUS;

(b) Beneficiary country. “Beneficiary country” means a country listed in section 107 of the AGOA (19 U.S.C. 3706) which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722) and which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a). See U.S. Note 1, Subchapter XIX, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS);

(c) Cut in one or more beneficiary countries. “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, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and final assembly of the article in one or more beneficiary countries, or both;

(d) Ethnic printed fabrics. “Ethnic printed fabrics” means fabrics:

(1) Containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the HTSUS;

(2) Of the type that contains designs, symbols, and other characteristics of African prints:

(i) Normally produced for and sold on the indigenous African market; and

(ii) Normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;

(3) Printed, including waxed, in one or more eligible beneficiary countries; and

(4) Formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary countries from yarn originating in either the United States or one or more beneficiary countries;

(e) Foreign origin. “Foreign origin” means, in the case of a finding or trimming of non-textile materials, that the finding or trimming is a product of a country other than the United States or a beneficiary country and, in the case of a finding, trimming, or interlining of textile materials, that the finding, trimming, or interlining does not meet all of the United States and beneficiary country or former beneficiary country production requirements for yarns, fabrics, and/or components specified under § 10.213(a) for the article in which it is incorporated;

(f) Former beneficiary country. “Former beneficiary country” means a country that, after being designated by the President as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a free trade agreement with the United States;

(g) HTSUS. “HTSUS” means the Harmonized Tariff Schedule of the United States;

(h) Knit-to-shape articles. “Knit-to-shape,” when used with reference to sweaters or other apparel 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;”

(i) Knit-to-shape components. “Knit-to-shape,” when used with reference to textile

components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is “knit-to-shape;”

(j) Lesser developed beneficiary country. “Lesser developed beneficiary country” means a country that is enumerated in U.S. Note 2(d), Subchapter XIX, Chapter 98, HTSUS and that is also enumerated in U.S. Note 1, Subchapter XIX, Chapter 98, HTSUS. See section 112(c)(3) of the AGOA (19 U.S.C. 3721(c)(3));

(k) Major parts. “Major parts” means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components;

(l) NAFTA. “NAFTA” means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992;

(m) Originating. “Originating” means having the country of origin determined by application of the provisions of § 102.21 of this chapter;

(n) Preferential treatment. “Preferential treatment” means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations, as provided in 19 U.S.C. 3721(a);

(o) Self-start edge. “Self-start edge,” when used with reference to knit-to-shape components, means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine;

(p) Sewing thread. “Sewing thread” means thread designed and used for the assembly or

hemming of textile or apparel components or articles;

(q) Sewn or otherwise assembled in one or more beneficiary countries. “Sewn or otherwise 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;

(r) Wholly assembled in. “Wholly assembled,” 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, 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;

(s) 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 or former beneficiary countries. For purposes of this definition, dyeing, printing and finishing operations are not production processes that involve fabric formation (see § 10.213(b)(1));

(t) 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; and

(u) 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 drawing to fully orient a filament, 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. For purposes of this definition, dyeing, printing and finishing operations are not production processes that involve yarn formation (see § 10.213(b)(1)).

§ 10.213 Articles eligible for preferential treatment.

(a) General. The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more beneficiary 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, or both (including fabrics not formed from yarns, if those 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;

(2) Apparel articles sewn or otherwise assembled in one or more beneficiary 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, or both (including fabrics not formed from yarns, if those 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 Chapter 61 or 62 of the HTSUS, if, after that 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 in a beneficiary country;

(3) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with sewing thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary 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 (including fabrics not formed from yarns, if those fabrics are classified under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States);

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in one or more beneficiary countries), or from components knit-to-shape in one or more beneficiary countries from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both, or apparel articles wholly formed on seamless knitting machines in a beneficiary country from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both, whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), (2) or (3) of this section

(unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), (2), or (3) of this section), subject to the applicable quantitative limit published in the **Federal Register** pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(5) Apparel articles wholly assembled, or knit to shape and wholly 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 the articles, subject to the applicable quantitative limit published in the **Federal Register** pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.12 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles, other than brassieres classifiable under subheading 6212.10, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, provided that the apparel articles would be considered an originating good under General Note 12(t) HTSUS, without regard to the source of the fabric or yarn of which the articles are made, if the apparel articles had been imported directly from Canada or Mexico;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabrics or yarn that the President or his designee has designated in the **Federal Register** as not available in commercial quantities in the United States;

(10) A handloomed, handmade, or folklore article or an ethnic printed fabric of a

beneficiary country or countries that is certified as a handloomed, handmade, or folklore article or an ethnic printed fabric by the competent authority of the beneficiary country or countries, provided that the President or his designee has determined that the article in question will be treated as being a handloomed, handmade, or folklore article or an ethnic printed fabric;

(11) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with sewing thread formed in the United States:

(i) From components cut in the United States and one or more beneficiary countries or former beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more beneficiary countries or former beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(11)(i) or paragraph (a)(11)(ii) of this section; and

(12) Textile and textile articles classifiable under Chapters 50 through 60 or Chapter 63 of the HTSUS that are products of a lesser developed beneficiary country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries.

(b) Dyeing, printing, finishing and other operations. (1) Dyeing, printing and finishing operations. Dyeing, printing and other finishing operations do not constitute part of a yarn or fabric or component formation process. Those operations may be performed on any yarn (including sewing thread) or fabric or knit-to-shape or other component used in the production of

any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a beneficiary country and not in any other country. However, in the case of an assembled article described in paragraph (a)(1) or (2) of this section, a dyeing, printing or other finishing operation may be performed in a beneficiary country without affecting the eligibility of the article for preferential treatment only if that operation is incidental to the assembly process.

(2) Other operations. An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a beneficiary country and not in any other country. However, in the case of an assembled article described in paragraph (a)(1) of this section, an operation may be performed in a beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process.

(c) Special rules for certain component materials—(1) General. An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in §10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section “findings and trimmings” include, but are not limited to, 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 are used in the production of brassieres),

zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section “interlinings” 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;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article;

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries or former beneficiary countries if the total weight of all those fibers and yarns is not more than 10 percent of the total weight of the article; or

(v) Any collars or cuffs (cut or knit-to-shape), drawstrings, shoulder pads or other padding, waistbands, belt attached to the article, straps containing elastic, or elbow patches that do not meet the requirements set forth in paragraph (a) of this section, regardless of the country of origin of the applicable component referred to in this paragraph.

(2) “Cost” and “value” defined. The “cost” of components and the “value” of findings and trimmings or interlinings referred to in paragraph (c)(1) of this section means:

(i) The ex-factory price of the components, findings and trimmings or interlinings as set out in the invoice or other commercial documents, or, if the price is other than ex-factory, the price as set out in the invoice or other commercial documents adjusted to arrive at an ex-factory price; or

(ii) If the price cannot be determined under paragraph (c)(2)(i) of this

section or if that price is unreasonable, all reasonable expenses incurred in the growth, production, manufacture or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit.

(3) Treatment of fibers and yarns as findings or trimmings. If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1) of this section.

(d) Imported directly defined. For purposes of paragraph (a) of this section, the words “imported directly” mean:

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

(2) 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

(3) 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:

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

(ii) 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

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

§ 10.214 Certificate of Origin.

(a) General. A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared in the beneficiary country by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the facts in the form specified in paragraph (b) of this section. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate of Origin on the basis of:

(1) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

(b) Form of Certificate. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

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

| | |
|-------------------------------|-------------------------------|
| 1. Exporter Name and Address: | 3. Importer Name and Address: |
| 2. Producer Name and Address: | 4. Preference Group: |

| 5. Description of Article: | | |
|---|---|---|
| Group | <i>Each description below is only a summary of the cited CFR provision.</i> | 19 CFR |
| 1-A | Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. | 10.213(a)(1) |
| 2-B | Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes. | 10.213(a)(2) |
| 3-C | Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. <u>and</u> beneficiary country or former 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 the United States <u>and</u> beneficiary countries or former beneficiary countries. | 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 United States and/or one or more beneficiary countries or former 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 of 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; ethnic printed fabric. | 10.213(a)(10) |
| 0-J | Textile articles classifiable in Chapters 50 through 60 or Chapter 63, HTSUS, that are products of a lesser developed beneficiary country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries. | 10.213(a)(12) |
| 6. U.S./African Fabric Producer Name and Address: | | 7. U.S./African Yarn Producer Name and Address: |
| | | 8. U.S. Thread Producer Name and Address: |

| | |
|--|--|
| 9. Handloomed, Handmade, or Folklore Article or Ethnic Printed Fabric: | 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: |

(c) Preparation of Certificate. The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

- (1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;
- (2) Block 1 should state the legal name and address (including country) of the exporter;
- (3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state “available to CBP upon request” in block 2. If the producer and the exporter are the same, state “same” in block 2;
- (4) Block 3 should state the legal name and address (including country) of the importer;
- (5) In block 4, insert the number and/or letter that identifies the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;
- (6) Block 5 should 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;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed, handmade or an ethnic printed fabric;

(12) Block 10, should be completed only when preference group identifier “8” and/or “H” is inserted in block 4 and should 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;

(13) Block 11 must contain the signature of the exporter or producer or of the exporter’s or producer’s authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple

shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see § 10.216(b)(4)(ii)). The “from” date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The “to” date is the date on which the blanket period expires;

(16) The telephone and facsimile numbers included in block 17 should be those at which the person who signed the Certificate may be contacted; and

(17) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.215 Filing of claim for preferential treatment.

(a) Declaration. In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. 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. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

(b) Corrected declaration. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or

other written statement to the CBP port where the declaration was originally filed.

§ 10.216 Maintenance of records and submission of Certificate by importer.

(a) Maintenance of records. Each importer claiming preferential treatment for an article under § 10.215 must maintain, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) Submission of Certificate. An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

- (1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose;
- (2) Must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;
- (3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to CBP upon request a written English translation of the Certificate; and
- (4) May be applicable to:
 - (i) 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

(ii) 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. For purposes of this paragraph and § 10.214(c)(15), “identical articles” means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) Correction and nonacceptance of Certificate. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) Certificate not required. (1) General. Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) 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;

(ii) A non-commercial importation of an article; or

(iii) 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.

Check One:

Producer

Exporter

Importer

Agent

Name

Title

Address

Signature and Date

(2) Exception. If the port director determines that an importation described in paragraph (d)(1) of this section 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 under §§ 10.214 through 10.216, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, 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.

§ 10.217 Verification and justification of claim for preferential treatment.

(a) Verification by CBP. A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to CBP under § 10.216, will be 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:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information 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

(3) Evidence 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.

(b) Importer requirements. In order to make a claim for preferential treatment under § 10.215, the importer:

(1) 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 provisions under § 10.213(a). 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 form set forth in § 10.214(b) is a record that would serve these purposes;

(2) 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 in paragraph (b)(1) of this section;

(3) 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 § 10.213(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from CBP, how the records and internal controls referred to in paragraphs (b)(1) through (3) of this section justify the importer's claim for preferential treatment.

PART 163 - RECORDKEEPING

4. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

5. The Appendix to Part 163 is amended by revising the listing for § 10.216 under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

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IV. * * *

§ 10.216 AGOA Textile Certificate of Origin

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PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

6. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

7. Section 178.2 is amended by adding an entry for “§§ 10.214-10.216” to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

| 19 CFR Section | Description | OMB control No. |
|------------------|---|-----------------|
| * * * | * * * | * * |
| §§ 10.214-10.216 | Claim for preferential treatment on textile and apparel articles under the African Growth and Opportunity Act | 1651-0082 |
| * * * | * * * | * * |

* * * * *

R. Gil Kerlikowske
Commissioner

Approved: May 15, 2014

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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