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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Parts 10, 163 and 178

[CBP Dec. 06-21]

RIN 1505-AB37

### Implementation of the Andean Trade Promotion and Drug Eradication Act

**AGENCY:** 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 Customs and Border Protection (CBP) Regulations which were published in the *Federal Register* on March 25, 2003, as T.D. 03-16, to implement the trade benefit provisions for Andean countries contained in Title XXXI of the Trade Act of 2002. The trade benefits under Title XXXI, also referred to as the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), apply to Andean countries specifically designated by the President for ATPDEA purposes. The ATPDEA trade benefits involve the entry of specific apparel and other textile articles free of duty and free of any quantitative restrictions, limitations, or consultation levels; the extension of duty-free treatment to specified non-textile articles normally excluded from duty-free treatment under the Andean Trade Preference Act (ATPA) program if the President finds those articles to be not import-sensitive in the context of the ATPDEA; and the entry of certain imports of tuna free of duty and free of any quantitative restrictions. The regulatory amendments adopted as a final rule in this document reflect and clarify the statutory standards for the trade benefits under the ATPDEA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits.

**DATES:** This final rule is effective on September 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Operational issues regarding textiles: Robert Abels, Office of Field Operations (202-344-1959).

Other operational issues: Lori Whitehurst, Office of Field Operations (202-344-2722). Legal issues: Cynthia Reese, Office of Regulations and Rulings (202-572-8812).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Andean Trade Promotion and Drug Eradication Act*

On August 6, 2002, the President signed into law the Trade Act of 2002 (the "Act"), Public Law 107-210, 116 Stat. 933. Title XXXI of the Act concerns trade benefits for Andean countries, is referred to in the Act as the "Andean Trade Promotion and Drug Eradication Act" (the "ATPDEA"), and consists of sections 3101 through 3108. This document specifically concerns the trade benefit provisions of section 3103 of the Act which is headed "articles eligible for preferential treatment."

Subsection (a) of section 3103 of the Act amends section 204 of the Andean Trade Preference Act (the ATPA, codified at 19 U.S.C. 3201-3206). The ATPA is a duty preference program that applies to exports from those Andean region countries that have been designated by the President as program beneficiaries. The origin and related rules for eligibility for duty-free treatment under the ATPA are similar to those under the older Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI statute, codified at 19 U.S.C. 2701-2707). As in the case of the CBI, all articles are eligible for duty-free treatment under the ATPA (that is, they do not have to be specially designated as eligible by the President) except those articles that are specifically excluded under the statute.

The changes to section 204 of the ATPA made by subsection (a) of section 3103 of the Act involve the following: (1) The removal of section 204(c) which provided for the application of reduced duty rates (rather than duty-free treatment) for certain handbags, luggage, flat goods, work gloves, and leather wearing apparel, with a consequential redesignation of subsections (d) through (g) as (c) through (f), respectively; and (2) a revision of section 204(b). Prior to the amendment effected by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA was headed "exceptions to duty-free treatment" and consisted only of a list of eight specific products or groups of products excluded from ATPA duty-free treatment.

As a result of the amendment made by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA now is headed "exceptions and special rules"

and consists of six principal paragraphs. These six paragraphs are discussed below.

Paragraphs (1) and (2): Articles That Are Not Import-Sensitive and Excluded Articles

Paragraph (1) of amended section 204(b) is headed "certain articles that are not import-sensitive" and provides that the President may proclaim duty-free treatment under the ATPA for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204, if the President determines that the article is not import-sensitive in the context of imports from ATPDEA beneficiary countries. Subparagraphs (A), (B), (C), and (D) cover, respectively:

1. Footwear not designated at the time of the effective date of the ATPA (that is, December 4, 1991) as eligible articles for the purpose of the Generalized System of Preferences (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461-2467);

2. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS);

3. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

4. Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

Paragraph (2) of amended section 204(b) is headed "exclusions" and provides that, subject to paragraph (3), duty-free treatment under the ATPA may not be extended to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date;

2. Rum and tafia classified in subheading 2208.40 of the HTSUS;

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

4. Tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

The effect of paragraphs (1) and (2) is to divide the former section 204(b) list of eight types of products excluded from ATPA duty-free treatment into two groups of four each. The four types of products covered by paragraph (1) would no longer be excluded from ATPA duty-free treatment but rather would be eligible for that treatment, provided that the President makes the appropriate negative import sensitivity determination. For these products (which include the handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced duty rates previously applied under removed section 204(c)), the country of origin and value-content and related requirements under section 204(a) of the ATPA and the regulations thereunder would apply. The four types of products covered by paragraph (2) would remain as exclusions from duty-free treatment except as otherwise provided in paragraph (3) in the case of certain apparel and textile articles and paragraph (4) in the case of certain tuna products, and the exclusion in the case of sugar and sugar products has been reworded to refer to tariff-rate quota applicability rather than HTSUS classification. Paragraphs (3) through (6) of amended section 204(b), as discussed below, are entirely new provisions.

#### Paragraph (3): Preferential Treatment of Textile Articles

Paragraph (3) of amended section 204(b) is headed "apparel articles and certain textile articles." Paragraph (3)(A) provides that apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if those articles are described in subparagraph (B), which states that the apparel articles referred to in subparagraph (A) are the following:

1. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following [clause (i)]:

a. Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the

fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States [subclause (I)];

b. Fabrics or fabric components formed or components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicuña [subclause (II)];

c. Fabrics or yarns, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA) [subclause (III)]; and

d. Fabrics or yarns, to the extent that the President has determined that the fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under clause (i)(III) [clause (ii)];

2. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)). For these articles, preferential treatment starts on October 1, 2002, and extends for each of the four succeeding 1-year periods, subject to the application of annual quantitative limits expressed in square meter equivalents and with an equal percentage increase in the limit for each succeeding year [clause (iii)];

3. A handloomed, handmade, or folklore textile or apparel article of an

ATPDEA beneficiary country that the President and representatives of the ATPDEA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300-B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [clause (iv)]; and

4. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both, but excluding articles entered under clause (i), (ii), (iii), or (iv) [clause (v)(I)]. However, during each of four 1-year periods starting on October 1, 2003, the articles in question are eligible for preferential treatment under paragraph (3) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of a producer or an entity controlling production that are entered and eligible under clause (v)(I) during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under clause (v)(I) during the preceding 1-year period [clause (v)(II)]; the 75 percent standard rises to 85 percent for a producer or entity controlling production whose articles are found by Customs and Border Protection (CBP) to have not met the clause (v)(II) 75 percent standard in the preceding year [clause (v)(III)].

In addition to the articles described above, paragraph (3)(B) provides for preferential treatment of the following non-apparel textile articles:

1. Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [clause (vii)(I)]; and

2. Textile luggage assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [clause (vii)(II)].

Clause (vi) under paragraph (3) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under paragraph (3). These special rules are as follows:

1. Clause (vi)(I) sets forth a rule regarding the treatment of findings and

trimmings. It provides that an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. 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, zippers (including zipper tapes), and labels.

2. Clause (vi)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, "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 paragraph (3) 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. This provision 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. Clause (vi)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (3) because the article contains yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries will not be ineligible for that treatment if the total weight of all those yarns is not more than 7 percent of the total weight of the good.

4. Finally, clause (vi)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under clause (i) or clause (iii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (4): Preferential Treatment of Tuna

Paragraph (4) of amended section 204(b) concerns the preferential treatment of tuna. Paragraph (4)(A) provides for the entry in the United States, free of duty and free of any quantitative restrictions, of tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country. Paragraph (4)(B)(i) has been amended by the Miscellaneous Trade and Technical Corrections Act of 2004 to define a "United States vessel" for purposes of paragraph (4)(A) as a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code [paragraph (4)(B)(i)(I)] or in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988 [paragraph (4)(B)(i)(II)]. Paragraph (4)(B)(ii) defines an "ATPDEA vessel" for purposes of paragraph (4)(A) as a vessel (1) which is registered or recorded in an ATPDEA beneficiary country, (2) which sails under the flag of an ATPDEA beneficiary country, (3) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country, (4) of which the master and officers are nationals of an ATPDEA beneficiary country, and (5) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

Paragraph (5): Customs Procedures

Paragraph (5) of amended section 204(b) is entitled "Customs procedures" and sets forth regulatory standards for purposes of preferential treatment under paragraph (1), (3), or (4). It includes provisions relating to import

procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each ATPDEA beneficiary country, and sets forth the responsibility of CBP regarding the study of, and reporting to Congress on, cooperative and other actions taken by each ATPDEA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (5) that require regulatory treatment in this document are the following:

1. Paragraph (5)(A)(i) provides that any importer that claims preferential treatment under paragraph (1), (3), or (4) 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 (5)(A)(i) 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 (5)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (5)(A)(i) will not be required in the case of an article imported under paragraph (1), (3), or (4) 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.

Paragraph (6): Definitions

Paragraph (6) of amended section 204(b) sets forth a number of definitions that apply for purposes of section 204(b). These definitions include, in paragraph (6)(B), a definition of "ATPDEA beneficiary country" as any "beneficiary country," as defined in section 203(a)(1) of the ATPA, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in sections 203(c)

and (d) and other appropriate criteria, including those specified under new paragraph (6)(B) of amended section 204(b).

On October 31, 2002, the President signed Proclamation 7616 (published in the **Federal Register** at 67 FR 67283 on November 5, 2002) to implement the new trade benefit provisions of section 3103 of the Act. The Annex to that Proclamation set forth a number of modifications to the HTSUS to accommodate the ATPDEA program, and those HTSUS changes were also the subject of a technical corrections document prepared by the Office of the United States Trade Representative and published in the **Federal Register** (67 FR 79954) on December 31, 2002.

#### *Interim Regulatory Amendments in T.D. 03-16*

On March 25, 2003, CBP published in the **Federal Register** (68 FR 14478) as T.D. 03-16 (corrected at 68 FR 67338 on December 1, 2003), an interim rule document setting forth amendments to the CBP Regulations that implement the trade benefit provisions for Andean countries. The regulatory changes in T.D. 03-16 implemented the new trade benefit provisions and conformed the ATPA implementing regulations to those statutory changes and involved, among other things, the following: (1) The addition of §§ 10.241 through 10.248 to implement those apparel and other textile article preferential treatment provisions within paragraphs (3), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures; (2) the addition of §§ 10.251 through 10.257 to implement those non-textile preferential treatment provisions within paragraphs (1), (4), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures; (3) the removal of the reference to § 10.208 in the introductory text of § 10.202; (4) the revision of § 10.201 to reflect the removal of that reduced-duty provision and to refer to §§ 10.241-10.248 and 10.251-10.257; (5) the amendment of paragraph (b) of § 10.202 to recast the list of articles excluded from the ATPA to reflect the terms of paragraph (2) of amended section 204(b); and (6) the amendment of Part 163 of the CBP Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim "(a)(1)(A) list") references to the ATPDEA Textile Certificate of Origin prescribed under § 10.246, the ATPDEA Declaration of Compliance for brassieres prescribed under § 10.248, and the ATPDEA Certificate of Origin for tuna and other non-textile articles prescribed under

§ 10.256. For a complete section-by-section discussion of each regulatory change, see T.D. 03-16. Please note that on December 1, 2003, two correction documents pertaining to T.D. 03-16 were published in the **Federal Register** (68 FR 67338).

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on March 25, 2003, T.D. 03-16 nevertheless provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. The prescribed public comment period closed on May 27, 2003. A discussion of the comments received by CBP is set forth below.

#### **Discussion of Comments**

A total of 6 commenters responded to the solicitation of public comments in the March 25, 2003, interim rule document referred to above. All of the comments received involved the regulatory provisions for the preferential treatment of apparel and other textile articles.

#### *Finishing Processes*

##### **Comment**

One commenter agrees with the decision to have a single provision in the regulations, § 10.243(b), address dyeing and finishing requirements contained in the ATPDEA. Further, the commenter agrees that "the restrictions (requiring the operations be performed in the United States) only apply to the dyeing, printing, and finishing of knit or woven U.S. fabrics, or the U.S. fabric components formed from those fabrics, of garments described only in § 10.243(a)(1) or (a)(2)." Based on the language in the provision, the commenter also believes that U.S. knit-to-shape components are not subject to the dyeing, printing, and finishing restriction which is consistent with CBP's position that knit-to-shape components are not fabrics.

The commenter disagrees, however, with CBP's conclusion that U.S. knit or woven fabrics or fabric components made from such U.S. fabrics that are used in apparel provided for in § 10.243(a)(7) are also subject to the requirement that the knit or woven fabric, or components made from such fabric be dyed, printed or finished in the United States. The commenter believes "that such U.S. fabrics or components, used in conjunction with (a)(7) DO NOT face a dyeing, printing and finishing restriction." The commenter believes CBP has misread the statute and reached an erroneous conclusion.

In making the argument that CBP has misread the statute, the commenter refers to a "hybrid provision" in the statute, cites to the language in § 204(b)(3)(B)(iii)(I), and states the provision "permits the inclusion of 'fabrics, fabric components formed, or components knit to shape described in clause (i).'" The commenter maintains that the requirement in subclause (i)(I) that U.S. knit or woven fabric and fabric components from such fabric be dyed, printed, or finished in the United States applies only with regard to apparel articles qualifying under subclause (i)(I). The commenter argues that the dyeing, printing, and finishing requirement does not apply to U.S. knit and woven fabric or fabric components when these inputs are used in apparel which qualifies for preferential treatment under another provision of the ATPDEA, namely apparel described in § 10.243(a)(7).

The commenter points to "common commercial practice" to argue that this dyeing, printing, and finishing requirement would not apply to U.S. inputs when used in conjunction with regional inputs as "the dyeing, printing, and finishing operations all need to occur in the same location to ensure consistency for all the components of the garment." The commenter argues that CBP's interpretation which applies the dyeing, printing and finishing requirement to knit and woven U.S. fabric and fabric components will result in apparel companies choosing not to buy U.S. inputs for hybrid U.S./regional garments.

##### **CBP's Response**

The commenter is correct that CBP does not view the dyeing, printing, and finishing requirement to extend to knit-to-shape components as such components are not considered "fabric" but are components created directly from yarn. CBP disagrees with the commenter's reading of the statute to limit the dyeing, printing, and finishing requirement contained in subclause (i)(I) to apparel articles qualifying for preferential treatment under that subclause only. CBP views the dyeing, printing, and finishing requirement contained in subclause (i)(I) as part of the description of the fabric, and fabric components formed from such fabric, provided for under that subclause. Consequently, the language in subclause (iii)(I) which allows for the use of fabrics, fabric components formed, or components knit-to-shape described in clause (i) is interpreted by CBP to include the dyeing, printing, and finishing requirement contained in subclause (i)(I) with regard to fabrics or fabric components wholly formed from

fabric which are described in that subclause. In the Conference Report to the Trade Act of 2002, Report No. 107-624, at page 251, it is clearly stated with regard to the dyeing, finishing and printing requirement: "Apparel made of U.S. knit or woven fabric assembled in an Andean beneficiary country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States." CBP's interpretation of the dyeing, printing and finishing requirement as part of the descriptive of the "inputs" provided for in subclause (i)(I) carries out the intent of Congress to ensure that U.S.-formed fabric and fabric components are finished in the United States. To interpret the provision, as suggested by the commenter (to apply the requirement only in the case when all the fabric and fabric components in an apparel article are wholly formed in the United States or one or more ATPDEA beneficiary countries) would mean that the introduction of any other fabric or fabric component within the apparel article (provided the fabric or fabric component is described within one of the other provisions of the ATPDEA) would negate the requirement regarding U.S. finishing so specifically stated by Congress in this Act and obstruct their intent as stated in the Conference Report previously cited.

As to the commenter's argument that "common commercial practice" dictates that the requirement to dye, print, and finish U.S.-formed fabric (and fabric components from such fabric) in the United States does not apply when U.S. "inputs" are combined with regional fabrics, we disagree. We agree that normally fabric for apparel production is dyed by lot and a manufacturer wants to use fabric from the same dye lot in the production of an apparel article, assuming the apparel article is constructed of one fabric. However, if fabrics from the United States and the region are being combined in the production of apparel, it is likely the fabrics will not be exactly the same. Dyes, inks and finishes will affect different fabrics of different constructions and different fiber compositions differently. Therefore, CBP rejects the proposition that "common commercial practice" dictates an interpretation of the dyeing, printing, and finishing requirement for U.S.-formed fabric which is contrary to the stated intent of Congress.

#### Comment

A commenter noted that the interim regulations do not provide a definition of the terms "dyeing," "printing," and

"finishing." The commenter would like CBP to publish definitions of these terms so as to clarify the requirements with regard to these processes.

#### CBP's Response

As technological advances may occur with regard to dyeing, printing and finishing processes, CBP will not attempt to provide a finite definition of these terms because the definition may not encompass such unforeseen advances. It is prudent to rely on the common and commercial meanings of these terms which may change over time with scientific and technological advances. Questions of whether a particular process constitutes a dyeing, printing, or finishing process will continue to be addressed on a case-by-case basis.

#### Interlinings

##### Comment

There is no clear translation into Spanish of the terms "chest type plate," "hymo piece," and "sleeve header." Assistance in this regard is requested. In addition, the same commenter requests that CBP not object to the use of other interlinings originating in third countries since the type of products exported by Peru use a minimum amount of such interlinings. Finally, the commenter asks if the use of interlinings originating in a country other than the United States or a beneficiary country and that is not one of the three types mentioned above, will preclude preferential treatment under the ATPDEA even though such interlinings, along with other accessories, represent less than 25% of the cost of the garment.

##### CBP's Response

CBP does not have the authority to allow the use of foreign (third country) interlinings beyond the three named and described in the ATPDEA. The use of other foreign interlinings in apparel articles, regardless of the amount, will preclude preferential treatment under the ATPDEA.

With regard to the lack of a clear translation into Spanish for the terms "chest type plate," "hymo piece," and "sleeve header," CBP is able to offer some descriptive information about these interlinings, which are used in the production of suit and suit-type jackets, which may be helpful when translated into Spanish.

A "sleeve header," which may also be referred to as a "sleevehead interlining," is an interlining piece sewn between the shell fabric and lining fabric along the outside shoulder seam where the sleeve joins the body of the garment. This

interlining provides fullness along the seam and enhances the appearance of a jacket at the point where the sleeve meets the shoulder. See Headquarters Ruling Letter (HQ) 559552, dated February 14, 1996, and HQ 966510, dated August 27, 2003.

A "chest type plate" may also be referred to as a "chest piece." This interlining piece is placed in the chest area of a jacket for strength and shape. It serves to stabilize the jacket, enhancing its appearance. See HQ 966510; <http://www.actk.nl/>; and <http://www.resil.com/dictionary>.

The term "hymo" is defined as "Fabric of mohair and linen, used in tailoring to reinforce body of a coat." See *A Dictionary of Costume and Fashion, Historic and Modern*, by Mary Brooks Picken, at 181 (Dover Publications, Inc., 1985). Similarly, from *Fairchild's Dictionary of Textiles*, edited by Dr. Isabel B. Wingate, at 289, "hymo" is defined as "A fabric made of mohair and linen. Used in tailoring to reinforce the body section of a coat." (Fairchild Publications, Inc., 1970). Based on these definitions, a "hymo piece" may be considered a type of "chest piece" or "chest type plate." The distinction between these two types of interlinings is that the "hymo piece" is constructed specifically of fabric of mohair and linen.

#### Short Supply

##### Comment

With regard to the designation of additional short supply fabrics and yarns, the commenter asks what criteria will be used by the President to determine that a fabric or yarn is scarce in the U.S. market, and when such determinations will be published in the **Federal Register**.

##### CBP's Response

Congress authorized the President to proclaim additional fabrics and yarns as eligible for preferential treatment under clause (i)(III) of section 3103(b)(3)(B) of the ATPDEA. This authority, provided in section 3103(b)(3)(B)(ii), has been delegated to the Committee for the Implementation of Textile Agreements (CITA). See "Notice of Redlegation of Authority and Further Assignment of Functions" which was published on December 2, 2002 (67 FR 71606). Questions regarding designations of fabrics or yarns as commercially unavailable, such as the criteria for making such determinations and the procedures involved, should be directed to the Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of

Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Information on “commercial availability” requests under the ATPDEA may be found at the Web site for the Office of Textiles and Apparel, Department of Commerce, at <http://www.otexa.ita.doc.gov>.

#### Comment

A commenter notes with appreciation a Textile Book Transmittal (TBT) publication by CBP (which is available on the CBP Web site), TBT-03-013 “List of Short Supply Fabrics for Trade Agreements,” and the use of the term “short supply” by CBP; the commenter believes CBP’s use of the term “reflects both an accurate description of this provision and the way the trade views this process.” However, the commenter takes issue with the language included in the TBT describing the general treatment for apparel produced from short supply fabrics or yarns designated by the Committee for the Implementation of Textile Agreements (CITA). The language at issue indicates that apparel incorporating short supply fabrics designated by CITA must use fabrics wholly formed in the United States from yarns wholly formed in the United States for all other fabric components in the garment for which the short supply fabric is not used.

The commenter cites to the language in the Conference Report for the Trade Act of 2002 (H. Rept 107-624) which clarifies congressional intent regarding the treatment of short supply inputs in apparel qualifying for preferential treatment under the trade program. The commenter refers to this report language to assert that when the short supply fabric determines the essential character of an apparel article, the remaining fabrics used in the apparel article may originate from anywhere; and, when the short supply fabric does not impart the essential character of an apparel article, it will not disqualify the apparel article from qualifying for preferential treatment under the ATPDEA. The use of the same short supply provision in the AGOA and CBTPA leads the commenter to conclude that designated short supply fabrics and yarns should be extended the same treatment, *i.e.*, consideration of only the fabric or yarn that determines the essential character of the apparel article.

The commenter notes that the interim regulations on the ATPDEA are silent on how CBP “expects to treat garments entered claiming a short supply fabric or yarn designated by CITA.”

#### CBP’s Response

In Section 3103(b)(3)(B)(ii) of the ATPDEA, the President is authorized to designate additional fabrics and yarns as in “short supply” and thus allowable in the construction of apparel articles under the ATPDEA regardless of the origin of the fabrics or yarns. This authority to designate additional fabrics and yarns has been delegated to CITA pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative’s Notice of Redesignation of Authority and Further Assignment of Functions (67 FR 71606).

The tariff provision which implements this provision of the ATPDEA is subheading 9821.11.10, HTSUS, which provides for: “Apparel articles sewn or otherwise assembled in one or more such countries, or the United States, or both, exclusively from any of the following: Fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner, under any terms as such authority may provide.”

The interim regulations were silent on how CBP will treat apparel articles under § 10.243(a)(1)(iv) of the regulations which pertains to apparel articles provided for in subheading 9821.11.10, HTSUS, because the authority to designate the fabrics or yarns allowed under this provision and the authority to designate any terms or requirements to be applied to the allowance of these fabrics or yarns in eligible apparel resides with CITA, pursuant to the language of the tariff. CBP will follow the language of the designation notices issued by CITA (which will appear in the **Federal Register**) in applying this provision to apparel articles as CITA is the designated U.S. government authority to make such determinations.

#### Comment

A commenter objects to the exclusion of brassieres from eligibility for preferential treatment under § 10.243(a)(1)(iii). The commenter claims that in the CBTPA changes contained in section 3107 of the Trade Act of 2002 and provisions of the ATPDEA, Congress included language that specifically envisions brassieres being imported under the respective short supply provisions in each of those two trade preference programs. 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

The commenter argues that in both CBTPA and ATPDEA legislative changes made by Congress, specifically listing exceptions for certain provisions, Congress clearly envisioned brassieres being imported under these respective provisions, including the short supply provisions. In CBP’s opinion, the specific exception language added to both the ATPDEA in section 3103(b)(3)(B)(v)(I) and the CBTPA in section 3107(a)(5)(iv) does not indicate that brassieres should therefore, be eligible under any or all of these excepted provisions. This clarifying language merely states that in determining eligibility requirements under the cited provisions, any brassieres classified in one of the exceptions would not be included in determining the eligibility under section 3103(b)(3)(B)(v)(I) and section 3107(a)(5)(iv). In fact, one of the exceptions listed in both section 3103(b)(3)(B)(v)(I) of the ATPDEA and section 3107(a)(5)(iv) of the CBTPA is a provision covering “Handloomed, Handmade, and Folklore Articles”. CBP is not aware of any brassieres that could be claimed under this provision and yet this is one of the exceptions listed. CBP believes that the Congress did not intend the listing of these exceptions to mean that brassieres would be classifiable in all these provisions.

#### Brassieres

#### Comment

A commenter is concerned that § 10.243(b)(2) requires brassieres to be produced and entered during the same year in order to qualify for inclusion in the calculations of a year’s shipments in order to determine eligibility of brassieres for preferential treatment in the following year. The commenter points to Example 6 in the interim regulations as illustrating this point. The commenter strongly disagrees with requiring brassieres to be produced and entered in the same year for the purpose of determining eligibility and asserts that the language adopted by Congress in drafting this provision of the ATPDEA requires that the calculation to determine eligibility be performed on brassieres “‘that are entered and eligible during the preceding 1-year period,’ regardless of when those actual brassieres are produced.”

#### CBP’s Response

The commenter has misread Example 6 in the interim regulations. A proper reading of the example reveals that it actually supports the view of the commenter that in determining the

brassieres to be included in calculating the aggregate value of the fabric formed in the United States which is present in brassieres in a 1-year period (October 1 to September 30) for the purpose of determining eligibility of brassieres for preferential treatment under this provision of the ATPDEA in the subsequent 1-year period, one includes brassieres which are entered and eligible during the preceding 1-year period and the year of production is not a determinative factor. In Example 6, brassieres not meeting the minimum 75 percent fabric standard are shipped to the United States in February. A second shipment of brassieres, meeting the 75 percent fabric standard and actually exceeding the 85 percent standard, is shipped in June. If these two shipments are entered in the same 1-year period year, the aggregate value would meet the 75 percent standard. However, the February shipment is entered for consumption on March 1 of the same calendar year; the June shipment is not entered for consumption until November 1 of that calendar year. Although entered for consumption in the same calendar year, these shipments were entered for consumption in different eligibility years which run from October 1 to September 30. Therefore, a valid declaration of compliance cannot be prepared for the shipment entered in March as it failed to meet the 75 percent standard; however, a valid declaration may be prepared for the shipment entered in November since it exceeded the 85 percent standard which would be applicable for brassieres entered in that year because of the failure to meet the 75 percent standard in the preceding year. The year of production of the brassieres is not a consideration in the example.

#### *Scope of the Term "Elastic Strips"*

##### Comment

Three commenters submitted observations concerning the scope of the term "elastic strips" in the list of examples of "findings and trimmings" set forth in § 10.243(c)(1)(A). [The ATPDEA includes a special rule that permits the use of foreign findings and trimmings in producing eligible textile and apparel articles, provided the value of those findings and trimmings does not exceed 25% of the cost of the components of the assembled article.] The commenters noted that the term "elastic strips" is not defined in the interim regulations and therefore the regulations provide manufacturers and importers little guidance regarding the scope of the term. All three commenters

urged CBP to narrowly construe the term so that it excludes most, if not all, narrow elastic fabrics. The commenters made the following specific points in support of their position:

1. The exception for foreign findings and trimmings under the ATPDEA "was necessarily intended to be of a restrictive nature, as the intent of the statute was to ensure that all fabric components be formed [in the] U.S. or ATPDEA region."

2. If the exception for foreign "elastic strips" is interpreted as including narrow elastic fabrics, an entire segment of the U.S. textile industry (the weavers and knitters of narrow elastic fabric) will be adversely affected as it will receive absolutely no benefit from the fabric origin requirements of the ATPDEA. In passing this statute, Congress did not intend to exclude from its benefits all U.S. producers of narrow elastic fabrics.

3. In the textile industry, the word "strip" is used to describe cut (slit) pieces of flat rubber or other elastic material of a rubber-like consistency throughout. Narrow elastic fabrics that are essential components are not normally considered elastic strips.

4. CBP rulings support the view that most fabric components "that serve a purpose" are not findings. See HQ 559522 dated February 14, 1996. In addition, CBP rulings have generally not considered fabric components to be trimmings.

5. It is noted that the ATPDEA did not replicate language in the Caribbean Basin Trade Partnership Act (CBTPA) limiting "elastic strips" in the findings and trimmings exception to elastic strips of less than one-inch in width and used in the production of brassieres. By omitting this language in the ATPDEA, Congress intended to exclude elastic fabric brassiere straps from the findings and trimmings exception. This is consistent with the belief that Congress intended to exclude from the findings and trimmings exception fabric components, such as waistbands, leg gatherings and brassiere straps, that are essential to the garment and are not primarily decorative.

##### CBP's Response

Section 10.243(c)(1)(A) essentially repeats the language found in the statute (amended section 402(b)(B)(vi)(I) of the ATPA) relating to the exception for findings and trimmings and the examples set forth therein. Therefore, CBP acknowledges that the regulation provides no guidance as to what is meant by "elastic strips" in the findings and trimmings rule. However, as further explained below, CBP believes that,

generally speaking, determinations regarding the scope of that term should be made on a case-by-case basis through the CBP rulings process.

CBP agrees with the assertion by one commenter that the exception for foreign findings and trimmings in the ATPDEA was necessarily intended to be of a restrictive nature. With few exceptions, the preferential treatment accorded to textile and apparel articles under the ATPDEA, like the treatment accorded to similar articles under the AGOA and CBTPA, is based upon the requirement that all fabric components be formed in the United States or the ATPDEA region. Therefore, CBP believes that the scope of the term "findings and trimmings" should be limited to the specific items set forth as examples in the statute as well as items that are closely analogous to the cited examples.

In response to the argument that Congress did not intend to exclude an entire segment of the U.S. textile industry (producers of narrow elastic fabric) from benefiting from the ATPDEA, CBP notes that it attempts to discern Congressional intent from the specific wording in the statute as well as the legislative history. In regard to the use of the term "elastic strips" in the ATPDEA, the statute's legislative history sheds no light on how the term should be defined. However, as one commenter pointed out, Congress did not include language limiting the scope of the term "elastic strips" in the "findings and trimmings" rule to elastic strips that are "each less than 1 inch in width and used in the production of brassieres," as it did in the AGOA and CBTPA statutes.

One seemingly inescapable conclusion that can be drawn from the above omission in the ATPDEA is that Congress did not intend that the term "elastic strips" would be subject to the "less than 1 inch in width" brassiere strip limitation. Therefore, in future considerations of whether particular items qualify as "elastic strips" under the "findings and trimmings" exception in the ATPDEA, CBP will not disqualify an item solely because it is an inch or more in width and used in the production of garments other than brassieres.

However, CBP agrees with the assertion by one commenter that, by failing to limit the term "elastic strips" in the ATPDEA to certain narrow elastic brassiere strips, Congress intended to exclude elastic fabric brassiere straps from being considered findings and trimmings under this statute. HQ 562018 dated March 22, 2002, concerned whether the use of foreign-origin 1/2 inch wide polyurethane strips

in the construction of brassieres would disqualify the brassieres from receiving preferential treatment under the CBTPA. CBP concluded initially that the polyurethane strips are outside the scope of the exception for “elastic strips” because the language limiting that exception to certain narrow elastic strips used in the production of brassieres related only to elastic fabric strips. CBP then determined in HQ 562018 that the polyurethane strip is not a “finding or trimming” inasmuch as it is not a “supplementary element used to construct the garment, but, rather, is a brassiere strap, a major component of the brassiere.” Because the polyurethane strip was neither a textile component nor a “finding or trimming,” CBP concluded that the strip’s presence in the brassiere would not preclude the article from receiving preferential treatment under the CBTPA. Consistent with HQ 562018, CBP believes that brassiere straps, whether made of fabric or a non-textile material, do not qualify as “findings or trimmings” for purposes of the ATPDEA.

Concerning whether the term “elastic strips” should be construed as encompassing narrow elastic fabrics or only non-textile rubber strips, or both, it is noted that in rulings interpreting “elastic strips” as that term appears in the AGOA and CBTPA, CBP determined that the term encompassed only “narrow elastic fabric less than one inch in width used in the production of brassieres.” (Emphasis added.) *See, for example*, HQs 965909 dated January 7, 2003, 562018 dated July 10, 2001, and 966495 dated July 3, 2003. However, the basis for this conclusion was a statement in the legislative history of the CBTPA indicating that that program was to be administered in a manner consistent with the “Special Access Program” (SAP). A directive issued in connection with the SAP stated that “the foreign origin exception for elastic strips is clarified as limited to narrow elastic fabric less than one inch in width used in the production of brassieres only.” (Emphasis added.) As previously indicated, the term “elastic strips” in the ATPDEA “findings and trimmings” rule is not limited to strips less than 1 inch in width used in the production of brassieres. Moreover, there is no similar reference in the ATPDEA’s legislative history to the SAP. As a result, CBP concludes that the above rulings relating to the AGOA and CBTPA are not controlling with respect to this issue and that “elastic strips” in the ATPDEA should not be construed as

encompassing only narrow elastic fabric strips.

By the same token, CBP cannot agree with the contention that the term “elastic strips” should be construed as encompassing only non-textile (*e.g.*, rubber) strips as CBP is not aware of any evidence indicating that Congress intended such a construction. Rather, CBP believes that, in determining whether certain items qualify as “elastic strips” under the ATPDEA, consideration should be given to items consisting of elastic fabric material as well as items consisting of non-textile elastic material.

CBP also does not agree with the argument that elastic fabric strips used in waistbands and leg gatherings are automatically excluded from the “findings and trimmings” exception under the ATPDEA. Previous CBP rulings on the scope of the “findings and trimmings” exception under other preference programs and provisions have defined “findings” as “sewing essentials used in textile goods” and “trimmings” as “decoration or ornamental parts.” Rubber tape used to provide secure fittings in the leg and arm openings of garments, such as bathing suits, underwear and sweatpants, have been held to qualify as “findings” under the CBTPA and subheading 9802.00.90, HTSUS. *See* HQs 966239 dated May 16, 2003, 966317 dated June 9, 2003, and 561868 dated July 10, 2001. By analogy, elastic fabric strips serving the same functions would also qualify as findings under the ATPDEA. Whether elastic fabric strip used in waistbands would also qualify as findings will be determined pursuant to the CBP rulings process.

#### Comment

A commenter commends CBP for the inclusion in § 10.243(b)(2) of language “that clarifies that a series of post-assembly finishing operations will not disqualify a garment entered under specific provisions.”

#### CBP’s Response

CBP appreciates the comment.

#### Certificate of Origin

#### Comment

A commenter believes the Certificate of Origin may be further simplified into one form to serve the AGOA, the CBTPA and the ATPDEA as the requirements for all three programs are the same. The commenter also requests that “available upon request” be permitted with regard to information requested on the certificate for thread, fabric and yarn names and addresses.

#### CBP’s Response

We 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 make the form more complex, especially for the exporter or producer who is required to complete the form and is responsible for ensuring that the information is accurate. A combining of the form could include groupings or requirements that would be in place for AGOA, *e.g.* knit to shape with 50 percent by more of weight of fine wool that do not exist for CBTPA or ATPDEA.

However with regard to the commenter’s second point, CBP will not accept “available upon request” where information is needed on the name and address of the yarn, fabric and thread suppliers. The certificate of origin is not a document that is required for entry purposes. The importer must have it in their possession when making the claim. When CBP requests the certificate of origin all information must be on that form to assist CBP in confirming the accuracy of the claim. CBP does not want to make a second request to see what should have been available when a request was made to see the certificate of origin on the first request.

#### Comment

A commenter inquired about reproduction of the Certificates of Origin shown in the **Federal Register** notice.

#### CBP’s Response

The Textile Certificate of Origin shown in the interim regulations is shown to illustrate the format in which the information should be presented; it is not a form. This format may be reproduced locally.

#### *Handloomed, Hand-Made and Folklore Articles*

#### Comment

A commenter raises questions with regard to the provision of the ATPDEA which provides for handloomed, hand-made, and folklore articles. Specifically, the commenter wants to know how and when certification of such goods will be effectuated, particularly in light of the fact that Peru already has a system in place for the authorization of export invoices under the “Administrative Agreement of Authorization and Certification of Textile Products” which includes handloomed, hand-made and folklore articles. The commenter inquires as to whether a separate certification is necessary when there



already is a certification process in place and whether textile articles other than garments, such as pillows, carpets, covers, and tablecloths will also enjoy preferential treatment.

#### CBP's Response

CBP does not have the authority to answer these questions concerning the administration of the "Handloomed, Handmade, and Folklore Articles" provisions under the ATPDEA. These authorities and functions, which were granted to the President under the ATPDEA, were delegated in an Executive Order 13277 to USTR, including the authority to redelegate these authorities and functions. In a notice published in the **Federal Register** on Monday, December 2, 2002, such authorities and functions were assigned to the Secretary of State, the Secretary of the Treasury, the Secretary of Labor, the Secretary of Commerce, and the United States Trade Representative Office. The responsibility to administer this provision lies with the Committee for the Implementation of Textile Agreements (CITA). It is suggested that you contact them directly by writing to the Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, ITA/TD/OTEXA, Room H-3100, 14th and Constitution Avenue, NW., Washington, DC 20230.

#### Changes to the Regulations

While there are no changes to the interim regulations made in connection with the public comments, CBP in this final rule document has made a number of other changes to the interim regulatory texts for editorial and clarification purposes. These changes are as follows:

1. In § 10.242, CBP has determined that the definition of "foreign" as set forth in the interim regulations 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 and trimmings and interlinings provisions of § 10.243(c)) in the interim texts simply read "of a country other than the United States or an ATPDEA beneficiary country." However, because the various textile and apparel articles to which preferential treatment applies are described in § 10.243(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 an ATPDEA 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

an ATPDEA beneficiary country. For example, § 10.243(a)(1) refers to articles "assembled" in one or more ATPDEA beneficiary countries from "fabric 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 § 10.243(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 findings or trimmings or interlinings 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 an ATPDEA beneficiary country, the assembled article would not qualify for preferential treatment. On the other hand, a fabric formed outside the United States or the ATPDEA region, if used as a finding or trimming or interlining within the 25 percent limit, would not disqualify the article. Thus, under the interim definition of "foreign," U.S. and ATPDEA beneficiary country textile materials could be at a disadvantage vis-a-vis materials from outside the United States and the ATPDEA region, contrary to the overall thrust of the ATPDEA 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 and 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" to address these concerns.

2. In § 10.242, CBP has added a new definition for the term "self start edge" and modified the definition of "knit-to-shape components" by adding the phrase "that is, the shape or form of the component as it is used in the apparel article, containing at least one self start edge" after the words "specific shape."

3. In § 10.243(b)(1)(i), CBP has added the words "or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section" after the phrase "from yarns wholly formed in the United States". This change is being made because of the inadvertent omission of this statutory language in

section 3103(b)(3)(B)(i)(I) of the ATPDEA which limits the dyeing, printing, and finishing requirement to certain fabrics.

4. With reference to the findings, trimmings and interlinings provisions under § 10.243(c)(1)(ii), CBP has used an f.o.b. port of exportation basis for determining the "cost" of the components and the "value" of the findings and trimmings and interlinings. However, CBP now believes that the use of an ex-factory standard in lieu of the f.o.b. port of exportation standard would be more accurate because it eliminates 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 § 10.243(c)(1)(ii) in this final rule to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard.

5. With regard to who may sign the textile Certificate of Origin, §§ 10.244(a), 10.244(c)(12), 10.246(b)(2), and 10.254 refer to the exporter (and the exporter's authorized agent in the latter two provisions), but none of these provisions mentions the producer in this specific context. 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, §§ 10.244(a), 10.244(c)(12), 10.246(b)(2), 10.254, and 10.256(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 African Growth and Opportunity Act (AGOA) relating to the textile Certificate of Origin and thus brings uniformity to the three programs in this regard.

6. In § 10.248(b)(2)(ii), Example 5 has been changed to clarify that elastic strips used as brassiere straps are not considered findings or trimmings.

7. In § 10.248(c)(3)(i), CBP has amended blocks 4-6 of the declaration of compliance for brassieres by adding exclusion language regarding findings and trimmings after each reference to fabric(s) for purposes of calculating whether the minimum 75 or 85 percent

standard was met. This change is being made because of the inadvertent omission of this language in the interim rule.

8. In addition to those changes already noted above, references to the U.S. Customs Service within the regulatory text in §§ 10.244, 10.245, 10.246, 10.247 and 10.248 have been changed to CBP.

9. In § 10.252, the definition of the term “United States vessel” has been amended to reflect a change made by the Miscellaneous Trade and Technical Corrections Act of 2004 (MTTCA). The MTTCA added to the definition of a “United States vessel” to include the case of a vessel without a fishery endorsement that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988. Accordingly, in § 10.252, the definition of the term “United States vessel” has been amended by adding the phrase “or in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988” at the end of the sentence.

### Conclusion

Based on the analysis of comments and the discussion above regarding CBP’s further consideration of the interim rule, CBP is adopting as final some of the interim regulations published in T.D. 03–16 and amending certain of those interim provisions.

Concerning §§ 10.241 through 10.248 (provisions concerning textile articles), the following sections have been amended:

1. In § 10.242, the definition of “foreign” has been replaced by a definition of “foreign origin”; a new definition for the term “self start edge” has been added; and the definition of “knit-to-shape components” has been amended;

2. § 10.243(b)(1)(i) is revised by adding the words “or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section” after the phrase “from yarns wholly formed in the United States”;

2. § 10.243(c)(1)(ii) is revised to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard;

3. §§ 10.244(a), 10.244(c)(12), and 10.246(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;

4. In § 10.248(b)(2)(ii), Example 5 has been changed to clarify that the scope of findings and trimmings with regard to elastic strips does not include elastic strips used as brassiere straps;

5. In § 10.248(c)(3)(ii), blocks 4–6 of the declaration of compliance for brassieres have been amended by adding exclusion language regarding findings and trimmings after each reference to fabric(s); and

6. §§ 10.244, 10.245, 10.246, 10.247 and 10.248 have been amended to change U.S. Customs Service to CBP.

Except as discussed above, interim §§ 10.241 through 10.248 are adopted as final. In view of the multiple changes throughout the textile and apparel regulatory provisions contained in §§ 10.241 through 10.248, those provisions are set forth in their entirety in this final rule document.

Concerning §§ 10.251 through 10.257 (provisions concerning non-textile articles), the following sections have been amended:

1. In § 10.252, the definition of the term “United States vessel” has been amended; and

2. §§ 10.254 and 10.256(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;

Except as discussed above, interim §§ 10.251 through 10.257 as published in T.D. 03–16 are adopted as final.

In addition, the following interim provisions published in T.D. 03–16 are adopted as final without change:

1. Interim §§ 10.201 and 10.202; and  
2. The interim amendments to the Appendix to part 163.

### Signing Authority

The amendments set forth in this document are 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 relating to certain CBP revenue functions.

### Executive Order 12866

This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

### Regulatory Flexibility Act

The regulations to implement the trade benefit provisions for Andean countries were previously published as interim regulations and provide trade benefits to the importing public.

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. 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 been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0091. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in these final regulations is in §§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256. This information conforms to requirements in 19 U.S.C. 3203 and is used by CBP to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to preferential treatment under the Andean Trade Promotion and Drug Eradication Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 4 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Customs and Border Protection, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Part 178 of the regulations (19 CFR part 178), containing the list of approved information collections, is revised to reflect this additional information collection.

### List of Subjects

#### 19 CFR Part 10

Andean Trade Preference, Assembly, Bonds, Customs duties and inspection,

Exports, 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, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

### Amendments to the Regulations

■ Accordingly, the interim rule amending parts 10 and 163, Customs and Border Protection Regulations (19 CFR parts 10 and 163), which was published at 68 FR 14478–14500 on March 25, 2003, and corrected at 68 FR 67338 on December 1, 2003, is adopted as a final rule with the following changes.

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

■ 1. The general authority citation for part 10 and the specific authority citation for §§ 10.241 through 10.248 and §§ 10.251 through 10.257 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 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

■ 2. Sections 10.241 through 10.248 are revised to read as follows:

#### § 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of

obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

#### § 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

**Apparel articles.** “Apparel articles” means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

**Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries.** “Assembled” and “sewn or otherwise assembled” when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

**ATPA.** “ATPA” means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

**ATPDEA beneficiary country.** “ATPDEA beneficiary country” means a “beneficiary country” as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

**Chief value.** “Chief value” when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

**Cut in one or more ATPDEA beneficiary countries.** “Cut” when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA 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 assembly of the article in one or more ATPDEA beneficiary countries, or both.

**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 ATPDEA 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 U.S. and ATPDEA beneficiary country production requirements for yarns, fabrics, and/or components specified under § 10.243(a) for the article in which it is incorporated.

**HTSUS.** “HTSUS” means the Harmonized Tariff Schedule of the United States.

**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.”

**Luggage.** “Luggage” means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffel bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians’ cases, sample cases), and like containers and cases designed to be carried with the person. The term “luggage” does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term “luggage” also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

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

**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

restrictions, limitations, or consultation levels as provided in 19 U.S.C. 203(b)(3).

*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.

*Wholly formed fabric components.* “Wholly formed,” when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

*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 a single country.

*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 or 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 the United States or in one or more ATPDEA beneficiary countries.

#### **§ 10.243 Articles eligible for preferential treatment.**

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly

formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly

formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations—(1) Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, 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 an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(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 an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General*. An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) 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, sewing thread, hooks and eyes, snaps, buttons, “bow buds,” decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) 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;

(C) 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; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

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

(A) 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

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if CBP finds that price to be 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.

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

(2) *Special rule for nylon filament yarn*. An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

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

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the

commerce of any country that is not an ATPDEA 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 ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA 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.

#### § 10.244 Certificate of Origin.

(a) *General*. A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer’s or exporter’s authorized agent in the format 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:

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#### ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN

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1. Exporter Name & Address:

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2. Producer Name & Address:

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ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN—Continued

3. Importer Name & Address:

4. Description of Article:

5. Preference Group:

Group ..	Each Description Below Is Only a Summary of the Cited CFR Provision.	19 CFR
A .....	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i).
B .....	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii).
C .....	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA .....	10.243(a)(1)(iii).
D .....	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv).
E .....	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A through D.	10.243(a)(2).
F .....	Handloomed, handmade, or folklore textile and apparel goods .....	10.243(a)(3).
G .....	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries .....	10.243(a)(4).
H .....	Textile luggage assembled from U.S. formed fabrics from U.S. yarns .....	10.243(a)(5)&(6).
I .....	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7).

6. U.S./Andean Fabric Producer Name & Address:

7. U.S./Andean Yarn Producer Name & Address:

8. Handloomed, Handmade, or Folklore Article:

9. Name of Short Supply 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.

10. Authorized Signature:

11. Company:

12. Name: (Print or Type)

13. Title:

14. Date: (DD/MM/YY)

15. Blanket Period:

From:  
To:

16. 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 Customs and Border Protection (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) Block 4 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;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(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 name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

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

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(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 14). The "to" date is the date on which the blanket period expires; and

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

**§ 10.245 Filing of claim for preferential treatment.**

(a) *Declaration.* In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, 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 § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, 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.

**§ 10.246 Maintenance of records and submission of Certificate by importer.**

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(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 an apparel or other textile article under § 10.245(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 through any electronic data interchange system authorized by CBP for that purpose;
- (2) If in writing, must be signed by the producer or exporter or the producer's or exporter'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 § 10.244(c)(14),

"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 ATPDEA.

- 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

§§ 10.244 through 10.246, 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.

**§ 10.247 Verification and justification of claim for preferential treatment.**

(a) *Verification by CBP.* A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to CBP under § 10.246, 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. or ATPDEA beneficiary country 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 § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile 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 § 10.243(a). If the

importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(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 Certificates 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 ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA 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 § 10.243(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 (b)(3) of this section justify the importer's claim for preferential treatment.

**§ 10.248 Additional requirements for preferential treatment of brassieres.**

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* "Producer" means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* "Entity controlling production" means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* "Fabrics formed in the United States" means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* "Cost" when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other

commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* "Declared customs value" when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(1) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(2) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be



unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(1) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(2) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: All reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to

shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year*. "Year" means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

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

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on

the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General*. For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(1) Will not be eligible for preferential treatment during the following year;

(2) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard

specified in paragraph (b)(1)(ii) of this section; and

(3) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in § 10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

*Example 1.* An ATPDEA beneficiary country producer of articles that meet the production standards specified in § 10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the

ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

*Example 2.* A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

*Example 3.* A producer in the second year begins production of articles that conform to the production standards specified in § 10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

*Example 4.* An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

*Example 5.* Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United

States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips for use as brassiere straps and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the labels is to be disregarded entirely because the labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

*Example 6.* An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

*Example 7.* A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on

compliance with the 85 percent standard in the immediately preceding (that is, third) year.

*Example 8.* An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production

of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.243(a)(4) and 10.248]

1. Year beginning date: October 1, _____ Year ending date: September 30, _____	Official U.S. CBP Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address: _____	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer:	
Full name and address: _____	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature: _____	8. Name and title (print or type): _____
Date: _____	

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance—(1) Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under § 10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity

controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in

paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the **Federal Register**.

■ 3. Section 10.252 is amended by revising the definition of the term “United States vessel” to read as follows:

**§ 10.252 Definitions.**

\* \* \* \* \*

*United States vessel.* “United States vessel” means either: a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code; or a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988.

■ 4. Section 10.254 is revised to read as follows:

**§ 10.254 Certificate of Origin.**

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate on the basis of:

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

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

■ 5. Paragraph (b)(2) of § 10.256 is revised to read as follows:

**§ 10.256 Maintenance of records and submission of Certificate by importer.**

\* \* \* \* \*

(b) \* \* \*

(2) Must be signed by the producer or exporter or by the producer's or exporter's authorized agent having knowledge of the relevant facts;

\* \* \* \* \*

**PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS**

■ 1. 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.*

■ 2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

19 CFR section	Description	OMB control No.
* * * * *	* * * * *	* * * * *
§§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256.	Claim for duty-free entry of eligible articles under the Andean Trade Promotion and Drug Eradication Act.	1651-0091
* * * * *	* * * * *	* * * * *

**Jayson P. Ahern,**  
*Acting Commissioner, Bureau of Customs and Border Protection.*

Approved: August 2, 2006.

**Timothy E. Skud,**  
*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 06-6741 Filed 8-4-06; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 208**

**RIN 1510-AB07**

**Management of Federal Agency Disbursements**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Financial Management Service (FMS) is publishing an interim final rule amending 31 CFR part 208 (part 208) to facilitate the delivery of Federal payments to victims of disasters and emergencies. Part 208 implements the provisions of 31 U.S.C. 3332, which generally requires that Federal payments be made by electronic funds transfer (EFT). Under 31 U.S.C. 3332, the Secretary of the Treasury (Secretary) must ensure that any individual required to receive a Federal payment by EFT have access to an account at a financial institution at a reasonable cost and with certain consumer protections. This amendment implements 31 U.S.C. 3332 by providing that the Department of the Treasury may establish and administer accounts for disaster victims in order to allow for the delivery of Federal payments by EFT. We are proceeding with this amendment in the form of an interim final rule that is effective without delay.

**DATES:** This interim final rule is effective August 7, 2006. Comments on the interim final rule are due on or before September 6, 2006.

**ADDRESSES:** This rule is available on the Financial Management Service's Web site at the following address: <http://www.fms.treas.gov/eft>. You may also inspect and copy this rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment. You may submit comments on the rule by going to the Government-wide rulemaking Web site, <http://www.regulations.gov>, and following the instructions for sending your comments electronically. Alternatively, you may email your comments to FMS at [208comments@fms.treas.gov](mailto:208comments@fms.treas.gov). You may also mail your comments to: Sally Phillips, Director, EFT Strategy Division, Financial Management Service, 401 14th Street, SW., Room 420, Washington, DC 20227. Comments received may be made publicly available.

**FOR FURTHER INFORMATION CONTACT:** Sally Phillips, Director, EFT Strategy Division, at (202) 874-7106 or [sally.phillips@fms.treas.gov](mailto:sally.phillips@fms.treas.gov); or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or [natalie.diana@fms.treas.gov](mailto:natalie.diana@fms.treas.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Treasury is amending part 208 in order to facilitate the delivery of Federal benefit and assistance payments to victims of emergencies and disasters. During the aftermath of Hurricane Katrina in 2005, many individuals who had been displaced from their homes were in immediate need of financial assistance. Treasury worked with Federal agencies to develop ways to provide Hurricane Katrina evacuees with fast, convenient, and secure access to assistance and benefit payments. Mindful of the possibility that a future emergency or disaster could disrupt the delivery of Federal payments through conventional methods such as direct deposit and check, we are amending

part 208 to provide for the establishment of accounts at a financial institution for disaster or emergency victims in order to allow for the delivery by EFT of Federal payments.

**Authority and Purpose**

31 U.S.C. 3332 generally requires that all non-tax Federal payments be made by EFT, unless waived by the Secretary. The Secretary must ensure that individuals required to receive Federal payments electronically have access to an account at a financial institution at a reasonable cost and with the same consumer protections as other accountholders. See 31 U.S.C. 3332(f), (i)(2).

Part 208 implements the requirements of 31 U.S.C. 3332. Part 208 sets forth requirements for accounts to which Federal payments may be sent by EFT; provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts; and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. Thus, part 208 contemplates that an individual entitled to a Federal payment either has access to a bank account to which the payment can be delivered electronically, or that the individual can receive and make use of a check payment.

In the extraordinary circumstances of a disaster or emergency, however, many individuals may not have access to their bank accounts and may not be able to readily establish new bank accounts. Such individuals would have no way to receive an electronic Federal assistance or benefit payment. Moreover, as Hurricane Katrina illustrated, in disaster or emergency situations, the postal delivery of checks may be delayed or disrupted at the very time when the expeditious delivery of Federal assistance and benefit payments is