

United States - Morocco Free Trade Agreement Implementation Information

December 29, 2005

Background

The US-Morocco Free Trade Agreement Implementation Act ("the Act"; Public Law 108-302; 118 Stat. 1103; 19 U.S.C. 3805 note) was signed on August 17, 2004. The Act authorizes the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods of Morocco provided for under the Agreement, and can be found on-line at the [U.S. Trade Representative \(USTR\)](#) website.

[Presidential Proclamation 7971](#), dated December 22, 2005, and published in the Federal Register on December 27, 2005, implemented the US-Morocco Free Trade Agreement (US-MFTA) for goods entered or withdrawn from warehouse for consumption on or after January 1, 2006. The Proclamation incorporated, by reference, [Publication 3721](#) of the United States International Trade Commission (USITC). Annex I of Publication 3721 amends the Harmonized Tariff Schedule (HTS) by adding a new General Note 27 containing specific information regarding the US-MFTA and a new Subchapter XII to Chapter 99 to provide for temporary tariff rate quotas (TRQs) and applicable safeguards implemented by the US-MFTA.

Annex II of Publication 3721 amends the HTS to provide for immediate and staged tariff reductions. Publication 3721 has been posted to the [USITC's](#) website.

The Agreement provides for the immediate or staged elimination of duties and barriers to bilateral trade in goods and services originating in the United States and/or Morocco. This memorandum provides instruction for the filing and acceptance of claims for preferential treatment of goods made under the US-MFTA. Title 19, Code of Federal Regulations will be amended to implement the Agreement and the Act. Accordingly, these instructions are subject to change until the regulations are issued.

Loss of Benefits Under the Generalized System of Preferences (GSP)

Morocco is no longer eligible for GSP benefits upon implementation of the US-MFTA. General Note 4(a) HTS is modified by deleting "Morocco" from the enumeration of independent beneficiary developing countries.

General Rules of Origin

Section 203 of the US-MFTA Implementation Act specifies the general rules of origin to be used in determining if a good qualifies for preferential tariff treatment under the Agreement. The HTS has been amended to include General Note 27, which contains Rules of Origin, definitions and other provisions to determine whether a good originates under the US-MFTA.

Generally, under the US-MFTA, a good shall qualify for preferential tariff treatment as a "product of Morocco" if:

- a. The good is wholly obtained or produced entirely in Morocco, the United States or both;
- b. For goods other than those covered by Annex 4-A (textiles and apparel) and Annex 5-A (certain plant and vegetable products, foods and beverages, plastics, metals, ignition wiring sets, and motor vehicle parts), the good is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties, and the sum of (i) the value of materials produced in the territory of one or both of the Parties, plus (ii) the direct costs of processing operations performed in the territory of one or both of the Parties is not less than 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or
- c. For goods covered by the rules in Annex 4-A or Annex 5-A, the good has satisfied the required tariff shift specified in the Annex (product-specific tariff shifts).

For purposes of the US-MFTA, a *new or different article* of commerce means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Determinations of whether a new or different article of commerce has been created should be guided by the specific rules set forth in Section 102.20 of the CBP Regulations.

Cumulation

The US-MFTA contains a “cumulation” provision, which provides that the value of materials produced and the direct costs of processing in the U.S. or Morocco may be counted without limitation toward satisfying the 35 percent value-content requirement. An originating good grown, produced, or manufactured in the territory of one or both of the Parties, incorporated into a good in the territory of the other Party, shall be considered to originate in the other Party. A good grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers shall be an originating good, provided that it satisfies the requirements of the Agreement.

A good, which has undergone simple combining or packaging operations or mere dilution with water or other substances, shall not be considered originating.

Textiles and Apparel

Textiles and apparel products may qualify as originating under US-MFTA if they meet the requirements as specified in the Agreement. The duty rate for these goods will be identified in the “special” column. Although there are differences, these requirements are similar to those in the NAFTA.

Below is a summary of the type of processes required for some of the more basic products in order for them to be considered eligible for US-MFTA. There are exceptions even to these requirements, depending on the specific type of product. For

more specific information refer to General Note 27(h) and Annex I of the modification to the HTS to implement US-MFTA, USITC Publication 3721.

- a) Yarn – generally, fiber must originate in Morocco or U.S. to qualify for preferential tariff treatment.
- b) Fabric – generally, yarn must originate in Morocco or U.S. to qualify for preferential tariff treatment. Cotton and man-made knit fabric are under fiber forward rules.
- c) Apparel – generally, yarn must originate in Morocco or U.S. to qualify for preferential tariff treatment.

Tariff Preference Levels (TPL)

TPLs have been established for textiles and textile apparel under the US-MFTA. Each of the TPLs is unique and goods must meet certain criteria in order to be eligible. The TPLs are listed below.

1. A TPL has been established for non-originating fabric goods provided for in Chapters 51, 52, 54, 55, 58 and 60 of the HTS and for non-originating apparel goods provided for in Chapters 61 and 62 of the HTS. The fabrics must be wholly formed in Morocco, regardless of the origin of the fiber or yarn used to produce the goods. The apparel goods must be cut or knit to shape, or both, and sewn or otherwise assembled in Morocco, regardless of the origin of the fabric or yarn used to produce the goods. The fabric and apparel TPL has a combined aggregate restraint limit and is provided for in Chapter 99, Subchapter XII, Note 64. This TPL is covered by HTS 9912.99.20.

2. A TPL has been established for eligible non-originating textile goods incorporating cotton fibers from designated sub-Saharan African countries that meet the criteria listed below. This TPL is provided for in Chapter 99, Subchapter XII, Note 65 and is covered by HTS 9912.99.40.

- a) Goods are not originating solely because cotton fibers used in the production of the good do not undergo an applicable change in tariff classification as set out in General Note 27.
- b) Goods use cotton fibers, classified in heading 5201.00 of the HTS, and originate in one or more of the least-developed beneficiary sub-Saharan African countries listed below.
- c) The cotton fibers are carded and combed in the territory of a Party or a designated least-developed country.
- d) The products include only yarns and knit fabric (fiber forward rules) classified within the ranges:

5204 through 5207
5401 through 5406
5508 through 5511
6001 through 6006

No apparel is subject to a cotton fiber forward rule.

The designated least-developed beneficiary sub-Saharan African countries are: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Comoros, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea Bissau, Lesotho, Madagascar, Equatorial Guinea, Liberia, Malawi, Mali, Mauritania, Mozambique, Central African Republic, Niger, Uganda, Rwanda, Sierra Leone, Chad, Tanzania, Somalia, Sudan, Sao Tome and Principe, Togo, Democratic Republic of Congo, and Zambia.

3. Forty-five TPLs have been established for certain originating textile and apparel goods provided for in Chapter 99, Subchapter XII, Notes 17 through 61. These TPLs are covered by HTS numbers 9912.61.01 through 9912.63.26. Each TPL has its own restraint level.

See the quota section of this document for information on identifying and reporting quota.

Other Textile and Apparel Goods of Morocco

If a good does not qualify as originating under US-MFTA or under the established TPLs, but it is still considered to be a product of Morocco, then the Normal Trade Relations rate under Column 1 would apply.

De Minimis (Textiles)

A textile or wearing apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A or General Note 27, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component.

Notwithstanding the preceding paragraph regarding de minimis, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party. (see General Note 27(e))

Treatment of Sets

Notwithstanding the specific rules of origin set out in General Note 27(h), textile or apparel goods classified under General Rule of Interpretation 3 of the HTS as goods put up in sets for retail sale shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the value of the set determined for purposes of assessing customs duties. (see General Note 27(e))

Agricultural Tariff Rate Quotas (TRQ)

The US-MFTA provides 15 quantitative restraints associated with a reduced duty rate for agricultural products such as cheese, butter, dairy products, beef, cotton, and tobacco provided for in Chapter 99, Subchapter XII, US Notes 3 through 16. The agricultural quotas are covered by HTS numbers 9912.02.05 through 9912.52.40.

Quota

For TPL goods and agricultural products subject to a tariff-rate quota, the Special Program Indicator (SPI) "MA" must be placed in front of the Heading 9912 HTS number when the entry is filed. In addition to the 9912 number, the appropriate Chapter 1-97 HTS number must be identified on the CBP form 7501.

The application of tariff rate quotas for the US-MFTA will be addressed in separate instructions issued in the form of QBTs by the Headquarters Quota Branch. These instructions are available to CBP field officers as well as the importing community and include the quota period, procedures for quota openings, restraint limits, applicable HTS numbers, and any special processing instructions. These messages are available on the CBP Internet site, www.cbp.gov, under the TEXTILES AND QUOTA section of the IMPORT page. In addition to QBTs, there is also a link to the Commodity Status Report. This weekly report lists the fill rates for the tariff rate quotas. The past four reports are maintained on the site.

Eligible Articles (Non-Textile and Textile) / Immediate and Staged Reductions

The list of HTS item numbers that are eligible for immediate duty free treatment and staged duty reductions can be found in Annex II of Publication 3721. Annex II of Publication 3721 has been posted to the USITC website.

Information Necessary to Make a Claim

A claim for preferential tariff treatment may be filed at the time of entry summary by placing the symbol "MA" as a prefix to the HTS subheading for each good or line item for which treatment is being claimed.

Importers are required to maintain for five years after the date of importation, all records relating to the importation of the good, including, but not limited to the purchase of, cost of, value of and payment for the good and the materials used in the production of the good.

CBP Verification

The US-MFTA places the burden of substantiating the validity of the claim for preferential tariff treatment on the importer. An importer may make a claim based on knowledge or information in his possession that the good qualifies as an originating good. CBP may verify the validity of the claim and will direct inquiries for verification via a CBP Form 28, Request for Information, to the importer.

The importer will substantiate a claim by submitting a signed declaration containing the information on Attachment A and specifying how the good qualifies as originating. This declaration need not be in a prescribed format and may be submitted electronically.

CBP may request additional documentation beyond the declaration such as additional cost and manufacturing information. The importer shall provide the declaration, and any other requested documentation to CBP no later than 30 days from the date CBP issued the request.

Determination of a Claim

If the importer furnishes the requested declaration to CBP, and CBP determines based on that information that the good qualifies, CBP will notify the importer of the positive determination via a CBP Form 29, Notice of Action. The CBP Form 29 will state that the good qualifies, and will include the HTS number, description of the good and the relevant rule of origin applied to the good.

If the importer fails to submit a requested declaration, CBP will issue a negative determination via a proposed CBP Form 29, Notice of Action. The notice shall specify why the goods do not qualify for preferential tariff treatment and notify the importer that it has 20 days from the date of the notice to provide the declaration to CBP. The proposed CBP Form 29 will cite the appropriate statutes and/or regulations and detail the rate and/or value advance, where appropriate. If the importer fails to comply with the proposed CBP Form 29 within 20 days of the date of the notice, a negative determination, containing findings of fact and the legal basis for the determination, will be sent to the importer in the form of a CBP Form 29, Notice of Action Taken.

If the importer provides a declaration and/or supporting documentation, and CBP determines, based on the information submitted, that the goods do not qualify for preferential tariff treatment, a negative determination will be sent to the importer in the form of a CBP Form 29, Notice of Action Taken. The notice will specify why the goods do not originate pursuant to the US-MFTA rules of origin, cite the appropriate statutes and/or regulations and detail the rate and/or value advance where appropriate.

Claims for preferential tariff treatment may be based on a declaration that pertains to a single shipment or a blanket statement covering shipments for a period of up to 12 months. Where a negative determination is made with respect to a blanket statement, CBP shall deny preferential tariff treatment to all importations of identical merchandise covered by that blanket statement for all entries that have not reached final liquidation.

Where CBP determines through verification that an importer has certified falsely or without substantiation more than once that a good qualifies as originating, CBP may suspend preferential tariff treatment to identical goods imported by such person until that person proves to CBP's satisfaction that these goods comply with the applicable rules and regulations and qualify for preferential treatment under this Agreement.

Corrected US-MFTA Claims

An importer who is aware that a claim is not valid is required to promptly make a corrected declaration. Penalties will not be assessed if the importer voluntarily declares that imported goods were not originating according to the rules of origin, corrects the claim and pays any duty owed.

Petition and Protest Rights

Post-Importation Claims

Importers may make a post-importation to contest a denial of preference claim in accordance with the Post Entry Amendment (PEA) test program.

Protest Rights

Importers may file a protest to contest a denial of preference or other adverse action by CBP pursuant to 19 U.S.C. 1514 within 180 days of the date of liquidation or other adverse action by CBP.

Merchandise Processing Fees and Harbor Maintenance Fee

Goods eligible for preferential tariff treatment under the US-MFTA are not exempt from the merchandise processing fee (MPF) or the harbor maintenance fee (HMF).

Termination of the Agreement

There is no set expiration date for the US-MFTA. However, the provisions of and amendments made by the Act will cease to be effective upon the termination of the Agreement by written notification from either the U.S. or Morocco.

Action

Effective January 1, 2006, importers and brokers may file claims for preferential tariff treatment on qualifying goods that originate in Morocco. These claims shall be made at the time the entry summary is filed by placing on the CBP Form 7501 SPI "MA" as a prefix to the HTS item number for each line on which preferential tariff treatment is claimed.