

July 28, 2004

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS

FROM: Executive Director, Trade Compliance and Facilitation
Office of Field Operations

SUBJECT: TBT-04-022 Retroactive Benefits under the African Growth
and Opportunity Act (AGOA)

BACKGROUND:

The Trade and Development Act of 2000, which was signed into law on May 18, 2000, authorized a new trade and investment policy for sub-Saharan Africa. Section 112 of the Act outlines the treatment of certain textiles and apparel articles for AGOA. Apparel articles that are imported directly into the CBP territory of the United States from a designated beneficiary sub-Saharan African country shall enter free of duty and free of any quantitative limitations (excluding any tariff preference levels identified in the Act) if the country has satisfied the requirements set forth in Section 113.

The Trade Act of 2002, which was signed into law by President Bush on August 6, 2002, authorized amendments to the AGOA. Presidential Proclamation 7626, which was signed November 13, 2002 and published in the November 18, 2002 Federal Register (67 FR 69459) set forth those amendments.

The AGOA Acceleration Act of 2004, which was signed into law by President Bush on July 13, 2004, authorized additional amendments to the AGOA. Section 8 of this Act sets forth that the amendments in Section 3108 of the Trade Act of 2002 and those changes to section 112(b) by the AGOA Acceleration Act of 2004 are retroactive for goods entered on or after October 1, 2000 and before the date of the enactment of this Act. Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, CBP shall liquidate or reliquidate articles as free of duty and free of any quantitative limitations (excluding any tariff preference levels) that meet these requirements.

Liquidation or reliquidation may be made only if a request is filed with CBP within 90 days after the enactment of the AGOA Acceleration Act of 2004 and the request contains sufficient information to enable CBP to locate the entry or reconstruct the entry if it cannot be located.

The following is a summation of the amendments that may be applied retroactively.

AGOA II (Trade Act of 2002) Changes to the Preference Groupings:

HTS 9802.00.8042 Visa Grouping 1

Allows for US Knit-to-Shape Components

HTS 9819.11.03 Visa Grouping 2

Allows for US Knit-to-Shape Components

HTS 9819.11.06 Visa Grouping 3

Allows for US Knit-to-Shape Components

Allows for Combination of US Formed Fabrics and
US Knit-to-Shape Components

HTS 9819.11.09 Visa Grouping 4

Allows for Beneficiary sub-Saharan African (SSA) Country Knit-to-Shape
Components from US or SSA yarn

Allows for Articles Wholly Formed on Seamless Knitting Machines in Beneficiary
SSA country from SSA or US yarn

HTS 9819.11.12 Visa Grouping 5

Allows for Knit-to-Shape Articles Regardless of the Country of Origin of the yarn
Namibia and Botswana added to list of countries eligible for this benefit

HTS 9819.11.15 Visa Grouping 6 – no changes

HTS 9819.11.18 Visa Grouping 7

Diameter of the wool changed to 21.5 microns or finer

HTS 9819.11.21 Visa Grouping 8 – no changes

HTS 9819.11.24 Visa Grouping 8 – no changes

HTS 9819.11.30 Visa Grouping 3

New tariff number for apparel articles sewn or otherwise assembled in one or more beneficiary SSA countries with thread formed in the US, the foregoing (I) from components cut in the US or in one or more beneficiary SSA countries from fabrics wholly formed in the US from yarns wholly formed in the US (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS, or (II) from components knit-to-shape in the US and one or more beneficiary SSA countries from yarn wholly formed in the US, or (III) from any combination of two or more of the foregoing knitting-to-shape or cutting operations.

AGOA III (AGOA Acceleration Act of 2004) Changes to the Preference Groupings

HTS 9802.00.8042 Visa Grouping 1

Allows for Combination of US Formed Fabrics and US Knit-to-Shape Components

HTS 9819.11.03 Visa Grouping 2

Allows for Combination of US Formed Fabrics and US Knit-to-Shape Components

HTS 9819.11.06 Visa Grouping 3 – no changes

HTS 9819.11.09 Visa Grouping 4

Allows for Fabric, Knit-to-Shape Components, or both from Former Beneficiary SSA Countries

Allows for Yarn to Originate in Former Beneficiary SSA Countries

Allows For the Apparel Articles to be also Made from any of the Fabrics, Fabric Components Formed, or Components Knit-To-Shape Described in Groupings 1, 2, And 3 (Unless The Apparel Articles are Made Exclusively from any of the Fabrics, Fabric Components Formed, Or Components Knit-To-Shape Described In Groupings 1, 2, and 3.)

HTS 9819.11.12 Visa Grouping 5 – no changes

HTS 9819.11.15 Visa Grouping 6 – no changes

HTS 9819.11.18 Visa Grouping 7 – no changes

HTS 9819.11.21 Visa Grouping 8

Allows for the NAFTA “Short Supply” Fabric or Yarn to be Formed in any Country Including the US

HTS 9819.11.24 Visa Grouping 8 – no changes

HTS 9819.11.27 Visa Grouping 9

Allows for Ethnic Printed Fabrics

HTS 9819.11.30 Visa Grouping 3

Allows for Cut Components, Knit-to-Shape Components, or both from Former Beneficiary SSA countries

The AGOA Acceleration Act of 2004 specifically states that the amendments or modifications to Section 112(b) are retroactive to October 1, 2000. Therefore, amendments or modifications to the other provisions in Section 112 would not be entitled to retroactive treatment. (For example, special rules including the change to the collars and cuffs or the change to the de minimis provision that are in Section 112(d)).

All other entry document requirements of AGOA must be met at the time a claim is made (AGOA visa, AGOA certificate of origin, etc.) The requests must be made at the port of entry. All requests must be received at the port of entry no later than 90 days from the date of enactment, which is July 13, 2004.

INFORMATION:

Please pass this memorandum to Port Directors, Assistant Port Directors, Import Specialists, Inspectors, Entry Specialists, Brokers, Importers and other interested parties.

If you have any questions regarding the retroactive AGOA benefits, please contact Ms. Susan Thomas, at (202) 927-3719 or Mr. Robert Abels, at (202) 927-1959.

Please note that as of August 1, 2004 the above telephone numbers will change to (202) 344-3719 for Ms. Thomas and (202) 344-1959 for Mr. Abels.

/s/ Lou Samenfink for
Elizabeth G. Durant