

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.

This document sets forth, on an interim basis, amendments to the Customs Regulations to implement those new trade benefit provisions and to conform the existing ATPA implementing regulations to those statutory changes. These regulatory changes are discussed below.

### Section-by-Section Discussion of Interim Amendments

#### *Sections 10.201 and 10.202 and Removal of § 10.208*

In the existing ATPA implementing regulations, § 10.208 is removed in order to reflect the removal of paragraph (c) from section 204 of the ATPA, the cross-reference in the introductory text of § 10.202 is modified to reflect that removal, and § 10.201 is revised to reflect the removal of that reduced-duty provision and to refer to new §§ 10.241–10.248 and 10.251–10.257 discussed below. In addition, paragraph (b) of § 10.202 is amended by recasting the list of articles excluded from the ATPA to reflect the terms of paragraph (2) of amended section 204(b); the articles listed in paragraph (1) of amended section 204(b) are dealt with in new §§ 10.251–10.257.

#### *New §§ 10.241 Through 10.248*

New §§ 10.241 through 10.248 are intended 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.

Section 10.241 outlines the statutory context for the new sections and is self-explanatory.

Section 10.242 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of “apparel articles,” by referring to 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, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the

WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of “assembled” and “sewn or otherwise assembled” in the context of production in one or more ATPDEA beneficiary countries is based in part on the definition of “wholly assembled” in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)). However, the definition also allows a prior partial assembly in the United States, consistent with the overall structure of the ATPDEA as reflected in the types of operations allowed under the program.

3. The definition of “ATPDEA beneficiary country” is an adaptation of, and for purposes of this context is consistent with, the definition contained in section 204(b)(6)(B).

4. The definition of “chief value” is based in part on a definition of that term which appeared in the General Headnotes to the Tariff Schedules of the United States (TSUS), the predecessor to the HTSUS, and also relies on the concept of “value” used for purposes of the finding, trimmings, and interlinings provisions discussed below in connection with § 10.243(c).

5. The definition of “cut” in the context of production in one or more ATPDEA beneficiary countries provides that all fabric components used in the assembly of an article must be cut in ATPDEA beneficiary countries except where cutting and partial assembly takes place in the United States prior to cutting and assembly in the beneficiary countries. The exception in the case of the United States was included to ensure consistency with the definition of “assembled” and “sewn and assembled” discussed above (which, by allowing a partial assembly in the United States, implies that some cutting also will take place in the United States prior to the partial assembly).

6. The definition of “luggage” is based on the definition contained in the headnotes of Subpart D of Schedule 7 of the TSUS (the current HTSUS contains no definition of luggage).

7. The definition of “NAFTA” reflects the definition contained in section 204(b)(6)(C) of the ATPA.

8. The expression “wholly formed” is dealt with in three definitions, one with reference to yarns and another with reference to fabrics and the third with reference to fabric components, because each of these terms is modified by “wholly formed” in one or more provisions of the statute that specify production processes that must be performed in the United States or ATPDEA beneficiary countries. These definitions are intended to ensure that all processes essential for yarn, fabric,

and fabric component formation are performed in the United States or ATPDEA beneficiary countries. The following additional points are noted regarding these three definitions:

a. The definition that relates to fabric(s) is based in part on the definition of “fabric-making process” in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)), and a similar approach is used in the definition that relates to yarns. The definition that relates to fabric components requires both formation of the fabric and formation of the component from that fabric.

b. The definition of “wholly formed” yarns includes references to “drawing to fully orient a filament” and to ending with a yarn or “plied yarn.” The first reference concerns a production process, draw-texturing, that is applied to partially oriented yarn (POY) in order to fully orient the filament yarn and thus render it suitable for use as a yarn; Customs believes that a filament that requires draw-texturing cannot be considered to be “wholly formed” until that process is completed. The reference to ending with a “plied yarn” reflects the position of Customs that a yarn is completed, that is, “wholly formed,” only when it is in the form in which it will be used as a yarn to produce a textile product (for example, a fabric or a knit-to-shape component); thus, a single ply yarn that will be joined with other single ply yarns to create a plied yarn is not wholly formed until the plying procedure is completed.

c. Except in the case of yarns, each definition refers to various production processes that “took place in a single country.” A different approach is taken in the case of yarns because in several instances the article descriptions in the ATPDEA statutory and regulatory texts expressly refer to yarns wholly formed in one or more ATPDEA beneficiary countries. Thus, the “wholly formed yarns” definition refers to production processes that took place “in the United States or in one or more ATPDEA beneficiary countries” in order to allow for the sharing of yarn production processes among multiple beneficiary countries. For example, in the case of a single yarn formed in one beneficiary country and plied with other yarns in a second beneficiary country, or in the case of POY extruded in one beneficiary country and draw-textured in a second beneficiary country, the plied yarn and the draw-textured yarn would meet the “wholly formed” standard for yarns under the ATPDEA program.

Section 10.243 identifies the articles to which preferential treatment applies under paragraph (3) of amended section