

limitation of these processes to the United States and ATPDEA beneficiary countries, Customs believes that this is consistent with the overall structure and intent of the ATPDEA which is to benefit U.S. and Andean textile producers. The first condition, set forth in paragraph (b)(1)(i), reflects the U.S. dyeing, printing, and finishing requirement of paragraph (3)(B)(i)(I) of the statute and paragraph (a)(1)(i) of the regulatory text as discussed above. The second condition, set forth in paragraph (b)(1)(ii), reflects the principle that in the case of assembled luggage described in paragraph (a)(5) of the regulatory text (paragraph (3)(B)(vii)(I) of the statute), an operation that is incidental to the assembly process may be performed in an ATPDEA beneficiary country. This provision reflects the terms of subheading 9802.00.80, HTSUS, and the regulations under that HTSUS provision which include, in 19 CFR 10.16(c), a list of operations not considered incidental to assembly.

8. Paragraph (b)(2) covers post-assembly and other operations (for example, embroidering, stone-washing, perma-pressing, garment-dyeing). The paragraph provides that these operations will not disqualify an otherwise eligible article from preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and provided that, in the case of assembled luggage described in paragraph (a)(5), the operation is incidental to the assembly process in an ATPDEA beneficiary country. This paragraph is intended to have the same clarifying effect as paragraph (b)(1) discussed above.

9. Paragraph (c)(1) is divided into three parts: Paragraph (c)(1)(i) reflects the basic findings, trimmings, interlinings, and *de minimis* rules of paragraphs (3)(B)(vi)(I)–(III) of the statute; paragraph (c)(1)(ii) sets forth definitions of the terms “cost” and “value” as used in these provisions; and paragraph (c)(1)(iii) is intended to clarify the relationship between findings and trimmings on the one hand and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under the statute. The following additional points are noted regarding these paragraph (c)(1) texts:

a. In the first sentence of paragraph (c)(1)(i)(A), the words “the value of” have been added after the word “if” to clarify that it is the value of the findings and trimmings that must not exceed the 25 percent level. In addition, in the second sentence of paragraph (c)(1)(i)(A), the comma appearing in the

statutory text between “decorative lace” and “trim” has been removed to avoid an ambiguity between the meanings of “trimmings” and “trim.” Also in the second sentence of paragraph (c)(1)(i)(A), the words “zippers, including zipper tapes and labels” in paragraph (3)(B)(vi)(I) of the statute have been replaced with the words “zippers (including zipper tapes), and labels” because there is no such thing as a “zipper label” and to ensure proper treatment of labels as findings and trimmings in their own right.

b. A separate paragraph (c)(1)(i)(C) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words “(and any findings and trimmings)” in paragraph (3)(B)(vi)(II)(aa) of the statute.

c. The definitions of “cost” and “value” in paragraph (c)(1)(ii) are derived primarily from the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the ATPA regulations (in particular, 19 CFR 10.206(d)(3)).

d. As regards paragraph (c)(1)(iii), Customs believes that some clarification is appropriate in this context because sometimes a yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (c)(1)(iii) a foreign yarn that is used in an article as a finding or trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation.

10. In paragraph (c)(2), which sets forth the special rule for nylon filament yarn of paragraph (3)(B)(vi)(IV) of the statute, specific reference is made to Canada, Mexico, and Israel because those are the only countries with which the United States had a free trade agreement that entered into force before January 1, 1995.

11. The explanation of “imported directly” in paragraph (d) follows the text used in § 10.204 of the ATPA implementing regulations (19 CFR

10.204) but incorporates editorial changes to reflect an ATPDEA context.

Section 10.244 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in paragraph (5)(A)(i) of amended section 204(b). Paragraph (a) of the regulatory text contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific groups of articles described under paragraph (3)(B) of amended section 204(b) and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA (which involves different country of origin standards for preferential duty treatment). Paragraph (c) sets forth instructions for preparation of this Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the ATPDEA program.

Section 10.245 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in paragraph (5)(A)(i) of amended section 204(b) for procedures “similar in all material respects to the requirements of Article 502(1) of the NAFTA,” this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context.

Section 10.246 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to “the provisions of part 163” which set forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. This requirement parallels the NAFTA recordkeeping requirement in § 181.22.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1)