

2002, the President assigned this function to the U.S. Trade Representative (USTR).

Section 203(e) of the ATPA, as amended, gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above.

An interim rule, on a final and emergency basis, was published in the **Federal Register** (68 FR 5542) for public comment on February 4, 2003. Consistent with section 3103(d)(2) of the ATPDEA, the interim rule was similar to the regulations governing the annual review used to modify the U.S. Generalized System of Preferences (GSP), which is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended. The interim rule established an annual review that allows for public input, and includes procedures for requesting the withdrawal, suspension, or limitation of preferential duty treatment under the ATPA, as amended, and for reviewing such requests and implementing granted requests. USTR received two submissions with several comments on the interim rule. The following summarizes the comments and USTR's response to them. USTR has also made technical changes to the final regulations that do not affect the substance of the provision.

Comments

1. *Public Comment:* The regulations must provide for an article eligibility review as well as a country eligibility review.

USTR Response: The interim rule, consistent with section 203(e) of the ATPA, as amended, and section 3103(d) of the ATPDEA, addressed the issue of article eligibility in the context of country eligibility. The commenter suggests that the ATPDEA also requires the regulations to allow for petitions to add articles pursuant to section 204(b)(1) of the ATPA, as amended, which gives the President authority to proclaim certain articles as eligible for duty-free treatment under the ATPA if he determines that an article is not "import-sensitive in the context of imports from ATPDEA beneficiary countries."

In response, USTR notes first that section 3103(d)(1) requires the President to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA, consistent with section 203(e). As noted above, the President assigned this function to the USTR per Executive Order. Section 203(e) gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above. Second, section 3103(d)(2) requires the regulations to "include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment" under the ATPA.

Section 3103(d)(1) calls for the President (the USTR, by delegation) to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA, "consistent with section 203(e)." Section 203(e) refers solely to the withdrawal, suspension, or limitation of preferential duty treatment, and makes no reference to procedures for adding articles to the list of those eligible for preferential treatment. Moreover, section 3103(d)(2), which addresses the content of the regulations that must be promulgated, refers exclusively to procedures for requesting "withdrawal, suspension, or limitations" of preferential duty treatment under the ATPA, making no mention of procedures for adding articles. Thus, USTR does not agree that regulations implementing section 3103(d) must include procedures for adding articles pursuant to section 204(b)(1).

2. *Public Comment:* The regulations must be revised to expressly include the possibility of restoring benefits for an article for which benefits have been withdrawn, suspended, or limited.

USTR Response: Neither the GSP regulations, section 203(e) of the ATPA, as amended, nor section 3103(d) of the ATPDEA addresses the possibility of restoring benefits for an article for which benefits have been withdrawn, suspended, or limited. Consequently, USTR does not consider that it is required to include in the regulations procedures for restoring benefits. However, the ATPA provides authority for the President to restore benefits that

were withdrawn, suspended, or limited pursuant to section 203(e) if he determines that the country in question has resumed compliance with the eligibility criteria of the ATPA, as amended by the ATPDEA.

3. *Public Comment:* The procedures set out in the regulations should more closely adhere to those in the GSP regulations, in particular by limiting the right to file petitions to "interested parties," by establishing a petition process for adding products to the list of eligible articles, and by creating procedures for submitting economic data in support of such petitions.

USTR Response: This commenter makes three recommendations. First, the commenter suggests that the ATPA regulations, like the GSP regulations at 15 CFR 2007.0, should limit the right to file a petition to "interested parties." However, only the GSP provision that addresses petitions related to *product* eligibility under the GSP program, 15 CFR 2007.0(a), limits the right to petition to "interested parties." By contrast, the section of the GSP regulations that addresses *country* eligibility, 15 CFR 2007.0(b), affords the right to petition to "any person." Section 3103(d)(1) of the ATPDEA calls for regulations consistent with section 203(e) of the ATPA, which addresses both country and product eligibility. However, section 203(e) provides that any action to remove benefits for products must be based on a determination that a country no longer meets the eligibility criteria for ATPA benefits. It would be inappropriate to limit petitions addressing the broad range of issues related to a country's eligibility for benefits under the ATPA solely to "interested parties," as that term is defined in 15 CFR 2007.0(d). Rather, "any person" should be eligible to raise concerns about whether a country is continuing to meet the relevant eligibility criteria. Therefore, consistent with the broader approach to country eligibility petitions in the GSP regulations, the final ATPA regulations will permit "any person" to submit a petition seeking either the suspension or withdrawal of country eligibility or duty-free treatment. (The interim final rule inadvertently referred to "any person" as "any party" in several places. That error has been corrected in the final regulations.)

Second, the commenter suggests that the ATPA regulations should be similar to the GSP regulations in that they should contain procedures for adding products in accordance with section 204(b)(1) of the ATPA, as amended. This recommendation is addressed in