Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515–AB59

Andean Trade Preference

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement the duty preference provisions of the Andean Trade Preference Act (the Act). The document sets forth the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment on imported goods under the Act and specifies the documentary and other procedural requirements which apply to any claim for such preferential tariff treatment under the Act.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Tony Mazzoccoli, Office of Field Operations (202–927–0564).

Legal Aspects: Craig Walker, Office of Regulations and Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1991, President Bush signed into law the Andean Trade Preference Act (Public Law 102–182, Title II, §§ 201–206, 105 Stat. 1236–1244) (''the Act'', commonly referred to as the ATPA), the provisions of which are codified at 19 U.S.C. 3201 through 3206. Sections 202 and 204(c) of the Act (19 U.S.C. 3201 and 3203(c)) authorize the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other goods, from any country designated by the President as a beneficiary country pursuant to section 203 of the Act (19 U.S.C. 3202). On July 2, 1992, President Bush signed Proclamation 6455 (57 FR 30069) which (1) Proclaimed the duty treatment authorized by the Act, (2) designated Colombia as a beneficiary country for purposes of the Act, and (3) modified the Harmonized Tariff Schedule of the United States (HTSUS) to incorporate the substance of the relevant provisions of the Act; under the terms of the proclamation, the proclaimed duty treatment was effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 22, 1992. On the same date President Bush signed Proclamation 6456 (57 FR 30097) designating Bolivia as a beneficiary country for purposes of the Act, similarly effective July 22, 1992. On April 13, 1993, President Clinton signed Proclamation 6544 (58 FR 19547) which, among other things, designated Ecuador as a beneficiary country for purposes of the Act, effective April 30, 1993. On August 11, 1993, President Clinton signed Proclamation 6585 (58 FR 43239) designating Peru as a beneficiary country for purposes of the Act, effective August 26, 1993. The modifications to the HTSUS contained in Proclamation 6455 setting forth the substance of the relevant provisions of the Act are now contained in General Note 11, HTSUS, and eligible articles and other goods to which preferential duty treatment under the Act applies are identified within the HTSUS by the designation ''J'' appearing with or without an asterisk in the ''Special'' rate of duty subcolumn.

Sections 204(a)–(c) of the Act (19 U.S.C. 3203(a)–(c)) set forth the standards which govern the eligibility of articles for duty-free or reduced-duty treatment under the Act. Section 204(a), which contains the basic origin and related rules for purposes of duty-free treatment, was based on section 213(a) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2703(a)), which sets forth the origin and related rules governing duty-free treatment under the Caribbean Basin Initiative (CBI). Thus, in order to be eligible for duty-free treatment under the Act, an article imported from a designated beneficiary country must meet three basic requirements: (1) It must be imported directly from a beneficiary country into the customs territory of the United States; (2) it must have its origin in a beneficiary country, that is, it either must be wholly the growth, product, or manufacture of a beneficiary country or must be a new or different article of commerce that has been grown, produced, or manufactured in a beneficiary country; and (3) it must have a minimum domestic value content, that is, at least 35 percent of its appraised value must be attributed to the sum of the cost or value of materials produced in one or more beneficiary countries plus the direct costs of processing operations performed in one or more beneficiary countries. The provisions of section 204(a) of the Act further parallel the provisions of section 213(a) of the CBI statute in the following regards: (1) Simple combining or packaging operations or mere dilution with water or another substance does not confer beneficiary country origin on an imported article or on a constituent material of an imported article; (2) the term ''beneficiary country'' is defined as including the Commonwealth of Puerto Rico and the U.S. Virgin Islands for purposes of determining compliance with the 35 percent value content requirement; (3) the cost or value of materials produced in the customs territory of the United States (other than in Puerto Rico) may be counted toward the 35 percent value content requirement to a maximum of 15 percent of the appraised value of the imported article; and (4) the expression ''direct costs of processing operations'' is defined in the same manner. However, the origin and related rules of section 204(a) of the Act differ from the corresponding provisions in section 213(a) of the CBI statute in two principal respects: (1) Section 204(a) of the Act specifically allows input attributable to one or more CBI beneficiary countries for purposes of the 35 percent value content requirement (the corresponding CBI statutory provision makes no mention of input attributable to beneficiary countries under the Act); and (2) section 204(a) of the Act has no provision corresponding

to section 213(a)(4) of the CBI statute which was added to facilitate the addition of value to an article in Puerto Rico and the granting of duty-free treatment after final exportation of an article from a CBI beneficiary country. Section 204(b) of the Act lists eight categories of goods excluded from the duty-free treatment provided for in section 204(a), one of which refers to articles to which reduced rates of duty apply under section 204(c) of the Act. Section 204(c) directs the President to proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves and leather wearing apparel that: (1) Are the product of any beneficiary country; and (2) were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences (GSP) under Title V of the Trade Act of 1974 (19 U.S.C. 2461–2466). These reduced duty rates, which were generally implemented in equal annual stages over a 5-year period (commencing in 1992 and ending in 1996), appear in the HTSUS in the ''Special'' rate of duty subcolumn followed by the symbol ''J'' within parentheses.

The U.S. Customs Service is responsible for the administration of laws and regulations regarding the entry of merchandise into the United States. Moreover, section 204(a)(2) of the Act specifically directs the Secretary of the Treasury to promulgate such regulations as may be necessary to carry out the duty-free treatment provisions of the Act. Accordingly, this document proposes to amend the Customs Regulations to implement the duty preference provisions of the Act.

In view of the similarity between the origin and related rules under the Act and those under the CBI, the proposed regulations set forth in this document are based in significant part on the CBI regulations contained in §§ 10.191–10.198 of the Customs Regulations (19 CFR 10.191–10.198). However, some variations have been made from the CBI approach, in some cases to reflect differences between the Act and the CBI statute and in other cases to simplify or otherwise improve on the layout of the CBI regulations. The proposed regulations are discussed in detail below.

Discussion of Proposed Amendments

Section 10.201

This section sets forth a general statement regarding the purpose of the regulations with reference to the Act and its implementation by the President.

Section 10.202

This section sets forth definitions of terms or expressions of general use throughout the regulatory texts.

Paragraph (a), which defines ''beneficiary country'', reflects both the definition in section 203(a)(1) of the Act and the approach taken in § 10.191(b)(1) of the CBI regulations. The exception language in the definition is directed to those entities that are treated as beneficiary countries only for the limited purpose of the 35 percent value content requirement (see the discussion of § 10.206(b) below). Thus, where the term ''beneficiary country'' appears in a regulatory text without any modifier or qualification and the context does not involve the 35 percent value content requirement, such term has reference only to an ATPA beneficiary country as so designated by the President.

The definition of ''eligible articles'' in paragraph (b) is similar to the approach taken in § 10.191(b)(2) of the CBI regulations. The definition refers specifically to duty-free treatment, which is authorized under section 204(a) of the Act, and thus does not apply to reduced-duty treatment under section 204(c) of the Act (see § 10.208 below). The list of articles excluded from the definition reflect the terms of section 204(b) of the Act.

The definition of ''entered'' in paragraph (c) is taken from section 203(a)(2) of the Act.

The definition of ''wholly the growth, product, or manufacture of a beneficiary country'' in paragraph (d) simply refers to the definition of the same expression set forth in § 10.191(b)(3) of the CBI regulations.

Section 10.203

This section makes a general reference to the requirements for preferential duty treatment and with cross-references to the specific sections which set forth those requirements in detail. Although somewhat different from the approach taken in the CBI regulations, Customs believes that this general statement/cross-reference approach will facilitate the reader's overall understanding of the duty-free aspects of the Act and the requirements thereunder.

This section refers only to duty-free treatment (which is provided for under section 204(a) of the Act) and to those sections of the regulations that deal with the requirements for such treatment. Thus, this section and the other sections cited therein have no application in the case of reduced-duty treatment which is provided for separately under section 204(c) of the Act (see the discussion of § 10.208 below).

Section 10.204

This section implements the ''imported directly'' requirement of section 204(a)(1)(A) of the Act and is based on § 10.193 of the CBI regulations. As in the case of the CBI, reference is made to shipment from ''any'' beneficiary country because, under the wording of the statute (and as a means to facilitate cumulation of value among multiple beneficiary countries—see § 10.206 below), the article merely must be imported directly from ''a'' beneficiary country and thus does not have to be shipped from the beneficiary country where it was produced.

Section 10.205

This section sets forth the basic country of origin rules which apply to articles for purposes of duty-free treatment under section 204 of the Act.

The ''wholly the growth, product, or manufacture'' language in paragraph (a)(1) and the ''new or different article of commerce which has been grown, produced, or manufactured'' language in paragraph (a)(2) reflect standards required by section 204(a)(2) of the Act to be included in the implementing regulations.

Paragraph (b) implements the simple combining or packaging or mere dilution exceptions to duty-free eligibility required to be in the regulations by section 204(a)(2) of the Act. Since the language of the Act in this regard is identical to language used in the CBI statute, this paragraph follows § 10.195(a)(1) of the CBI regulations by including the words ''(as opposed to complex or meaningful)'' after the word ''simple'', and the last sentence is intended to shorten the regulatory text by incorporating by reference the provisions of the CBI regulations which clarify the meaning and application of identical statutory language. It should be noted that, as in the case of the CBI, the simple combining or packaging or mere dilution language operates only in the limited context of eligibility for duty-free treatment; that language does not limit or otherwise affect a determination as to whether a new or different article of commerce has been created in a beneficiary country within the meaning of paragraph (a)(2) of this section.

Section 10.206

This section implements the 35 percent value content requirement contained in section 204(a)(1)(B) of the Act.

Paragraph (a) sets forth the basic requirement but refers simply to ''a beneficiary country or countries''

without specifically mentioning CBI beneficiary countries even though such countries are specified in the statutory text with regard to both the cost or value of materials and the direct costs of processing operations (see the discussion of paragraph (b) below). As in the case of the CBI, the statutory and regulatory texts permit unlimited cumulation of value among ''beneficiary countries'' for purposes of meeting the 35 percent value content requirement.

In paragraph (b), the first sentence defines ''beneficiary country'' as including, for purposes of the 35 percent value content requirement, (1) the Commonwealth of Puerto Rico and the U.S. Virgin Islands and (2) any CBI beneficiary country. The reference to CBI beneficiary countries in this regulatory context (rather than in paragraph (a) of this section) is intended to simplify the regulatory texts here and elsewhere and will have no substantive effect on the proper interpretation and application of the statutory provisions. The second sentence of this paragraph is based on the second sentence of § 10.195(b) of the CBI regulations and is intended to clarify a basic legal limitation on the statutorially-permitted cumulation of value attributable to entities that are not ''beneficiary countries'' as defined in section 203(a)(1) of the Act: except in the case of Puerto Rico which is part of the customs territory of the United States, if value is added to an article in any such entity (that is, in the U.S. Virgin Islands or in a CBI beneficiary country) after final exportation of the article from a beneficiary country designated as such by the President under the Act and prior to importation into the United States, such addition of value would disqualify the article from duty-free treatment because the article would have entered the commerce of the intermediate entity and thus could not be considered to be ''imported directly'' upon arrival in the customs territory of United States within the meaning of section 204(a)(1)(A) of the Act and § 10.204 of the implementing regulations. While the same legal limitation would not apply *per se* in the case of value added in Puerto Rico or in the case of U.S.-produced materials added in the United States (see paragraph (c) of this section), as a practical matter the opportunities for such additions in a post-final-exportation context and prior to entry for consumption are limited by the following factors: (1) Bonded manufacturing warehouses cannot be used because under 19 U.S.C. 1311 and § 19.15 of the Customs Regulations (19 CFR 19.15) the article subjected to a manufacturing process in such a warehouse may not be withdrawn for consumption but rather must be exported; (2) while a storage and manipulation warehouse under 19 U.S.C. 1557 and 1562 and Part 144 of the Customs Regulations (19 CFR Part 144) could be used, the benefit as regards added value would not be significant in most cases because manufacturing processes are precluded in such warehouses; (3) while foreign-trade zones established and operated under 19 U.S.C. 81a–81u and Part 146 of the Customs Regulations (19 CFR Part 146) could be used, such facilities involve special procedures and limitations; and (4) while an article could be imported under a temporary importation bond for processing (including manufacture) under subheading 9813.00.05, HTSUS, and § 10.31 of the Customs Regulations (19 CFR 10.31), such an article ultimately would have to be exported in accordance with the terms of the bond. It is also noted in this regard that the Act contains no provision similar to section 213(a)(4) of the CBI statute (19 U.S.C. 2703(a)(4)) which was added in 1984 specifically for the purpose of facilitating the addition of value through tail-end processing performed in bonded manufacturing warehouses located in Puerto Rico.

Paragraph (c) reflects section 204(a)(1) as regards the inclusion of U.S.-produced materials and is based on § 10.195(c) of the CBI regulations.

Paragraph (d) is based on § 10.196 of the CBI regulations. The following points are noted as regards this paragraph:

1. Subparagraph (1) corresponds to paragraph (a) of the CBI regulation but with the following principal differences: (1) the simple combining or packaging or mere dilution limitation (also applicable to materials under section 204(a)(2) of the Act) has been included directly, rather than as a cross-reference to the rule set forth in the regulatory provision covering articles (§ 10.205(b)), for purposes of clarity and in order to ensure that a clear distinction is made between application of the rule for purposes of eligibility of an article for duty-free treatment and application of the rule for purposes of determining the origin of a material for purposes of the 35 percent value content requirement; and (2) to avoid unnecessary repetition of regulatory text, the examples of § 10.196(a), and the principles and examples of § 10.195(a)(2), of the CBI regulations have been incorporated by reference since those CBI provisions are equally applicable in the present context.

2. Subparagraph (2) is taken from § 10.196(b) of the CBI regulations.

3. Subparagraph (3) follows § 10.196(c) of the CBI regulations but also refers specifically to materials produced in the customs territory of the United States.

Paragraph (e) implements section 204(a)(3) of the Act (which is identical to section 213(a)(3) of the CBI statute (19 U.S.C. 2703(a)(3)) and follows the terms of § 10.197 of the CBI regulations.

Paragraph (f) is based on, and is used in the same context as, § 10.195(e) of the CBI regulations. Wherever origin terminology and the term ''beneficiary country'' are used together with reference to an article, the latter term is restricted so as to cover only a beneficiary country designated under the Act by the President, in order to reflect the fact that an article (as opposed to materials incorporated in an article) must be a product of such a beneficiary country and cannot be a product of a CBI beneficiary country.

Section 207

This section is intended to cover all procedural requirements, including the submission of documentation required to support a claim for duty-free treatment. The provisions of this section are based on CBI regulatory provisions.

Paragraph (a), which concerns the procedure for filing a claim for duty-free treatment, is based on § 10.192 of the CBI regulations but does not include the first sentence of the CBI provision which Customs believes is redundant and thus unnecessary. The exception language at the beginning of the paragraph is intended to reflect the fact that this procedure does not apply in the case of an informal entry.

Paragraph (b) concerns the documentary evidence of country of origin and of compliance with the 35 percent value content requirement and, subject to changes to reflect the context of the Act, follows the terms of § 10.198(a) of the CBI regulations.

Paragraph (c) sets forth the procedures which apply in the case of informal entries and is based on § 10.198(b) of the CBI regulations.

Paragraph (d), which concerns evidence of direct importation, is based on § 10.194 of the CBI regulations. However, the last sentence of paragraph (a) of the CBI provision has not been included because it is covered by paragraph (e) of this section.

Paragraph (e), which concerns verification of submitted documentation, is based on § 10.198(c) of the CBI regulations but refers to all documentation submitted under § 10.207, that is, evidence of country of

origin and of compliance with the 35 percent value content requirement submitted under paragraph (b) and evidence of direct importation submitted under paragraph (d).

Section 10.208

This section implements the duty-reduction provisions of section 204(c) of the Act. This section is set forth separately to reflect the fact that the Act treats the duty-reduction provisions separately from the duty-free provisions of section 204(a) and without any repetition of, or cross-reference to, the legal requirements that apply for purposes of duty-free treatment. Thus, paragraph (a) of this section does not refer to direct importation, the 35 percent value content requirement, or the simple combining or packaging or mere dilution limitation because, under the terms of the Act, those legal standards apply only for purposes of duty-free treatment under section 204(a), and no ATPA Declaration is required under this section because the ATPA Declaration is directed primarily to compliance with the 35 percent value content requirement. However, because Customs believes that the words ''product of'' as used in section 204(c)(1)(A) of the Act should be interpreted as synonymous with the basic origin rule used for Customs purposes, paragraph (a) of this section repeats the rule set forth in § 10.205(a) as discussed above. Paragraph (b), which sets forth the normal procedure for filing a reduced-duty claim, and paragraph (c), which covers verification of a reduced-duty claim, are variations of §§ 10.207(a) and (e) and are otherwise self-explanatory.

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Anenue, N.W., 3rd Floor, Washington, D.C.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The amendments reflect statutory requirements that are already in effect and follow existing regulatory provisions that implement similar statutory programs. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these proposed regulations is in § 10.207. This information conforms to requirements in 19 U.S.C. 3203(a) and is used by Customs to determine whether goods imported from designated beneficiary countries are entitled to duty-free entry under that statutory provision. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 5,000 hours.

Estimated average annual burden per respondent/recordkeeper: 2 minutes.

Estimated number of respondents and/or recordkeepers: 150,000.

Estimated annual number of responses: 150,000.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Andean trade preference, Customs duties and inspection, Entry procedures, Exports, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth above, it is proposed to amend Part 10, Customs Regulations (19 CFR Part 10), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, and a specific authority citation for §§ 10.201 through 10.207 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.201 through 10.207 also issued under 19 U.S.C. 3203.

2. Part 10 is amended by adding a new center heading followed by new sections 10.201 through 10.208 to read as follows:

Andean Trade Preference

Andean Trade Preference

§ 10.201 Applicability.

Title II of Public Law 102–182 (105 Stat. 1233), entitled the Andean Trade

Preference Act (ATPA) and codified at 19 U.S.C. 3201–3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country, to designate countries as beneficiary countries, and to proclaim duty reductions for certain goods not eligible for duty-free treatment. The provisions of §§ 10.202 through 10.208 of this part set forth the legal requirements and procedures that apply for purposes of obtaining such duty-free or reduced-duty treatment for articles from a beneficiary country which are identified for purposes of such treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the ''Special'' rate of duty column of the HTSUS.

§ 10.202 Definitions.

The following definitions apply for purposes of §§ 10.201 through 10.208:

(a) *Beneficiary country.* Except as otherwise provided in § 10.206(b), the term ''beneficiary country'' refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) *Eligible articles.* The term ''eligible'' when used with reference to an article means any merchandise which is imported directly from a beneficiary country as provided in § 10.204, which meets the country of origin criteria set forth in § 10.205 and the value-content requirement set forth in § 10.206, and which, if the requirements of § 10.207 are met, is therefore entitled to duty-free treatment under the ATPA. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textile and apparel articles which are subject to textile agreements;

(2) Footwear not designated on December 4, 1991, as eligible for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466);

(3) Tuna, prepared or preserved in any manner, in airtight containers;

(4) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710, Harmonized Tariff Schedule of the United States (HTSUS);

(5) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply;

(6) Sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12, HTSUS;

(7) Rum and tafia classified in subheading 2208.40.00, HTSUS; or

(8) Articles to which reduced rates of duty apply under section 204(c) of the ATPA (19 U.S.C. 3203(c)) (see § 10.208).

(c) *Entered.* The term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) *Wholly the growth, product, or manufacture of a beneficiary country.* The expression ''wholly the growth, product, or manufacture of a beneficiary country'' has the same meaning as that set forth in § 10.191(b)(3) of this part.

§ 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of ''Free'' appears in the ''Special'' subcolumn followed by the symbol ''J'' or ''J*'' in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) *Imported directly.* The article is imported directly from a beneficiary country as provided in § 10.204.

(b) *Country of origin criteria.* The article complies with the country of origin criteria set forth in § 10.205.

(c) *Value content requirement.* The article complies with the value content requirement set forth in § 10.206.

(d) *Filing of claim and submission of supporting documentation.* The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.207.

§ 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country; or

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the non-beneficiary country while en route to the United States, and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(c) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country and the invoices and other documents do not show the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.205 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Exceptions.* No article shall be eligible for duty-free treatment under the ATPA by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

§ 10.206 Value content requirement.

(a) *General.* An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary*

countries. For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in § 10.202(a).

(c) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(d) *Cost or value of materials.* (1) *''Materials produced in a beneficiary country or countries'' defined.* For purposes of paragraph (a) of this section, the words ''materials produced in a beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in § 10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a) of this part, and the principles and examples set forth in § 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials.* (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations.* (1) *Items included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in § 10.202(a), and any article produced or manufactured in a beneficiary country as defined in § 10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol ''J'' as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry.* (1) *Articles not wholly the growth, product, or manufacture of a beneficiary country.* (i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), the exporter or other appropriate party having knowledge of the relevant facts

in the beneficiary country as defined in § 10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____

Address _____

Signature _____

Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation.* In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in § 10.202(a), in order to ensure compliance with the value requirement under § 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) *Articles wholly the growth, product, or manufacture of a beneficiary country.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) *Shipments covered by an informal entry.* The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the port director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) *Evidence of direct importation.* (1) *Submission.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.204.

(2) *Waiver.* The port director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) *Verification of documentation.* The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as fully dutiable.

§ 10.208 Duty reductions for certain products.

(a) *General.* Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466), are not eligible for duty-free treatment under the ATPA. However, any such article from a beneficiary country may be subject to a reduced rate of duty set forth in the Harmonized Tariff Schedule of the United States in the applicable ''Special'' subcolumn followed by the symbol ''J'' in parenthesis, provided the article is a product of any beneficiary country. For purposes of this section, an article is a ''product of'' a beneficiary country if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Filing reduced-duty claim.* A claim for reduced-duty treatment under the ATPA may be made at the time of filing the entry summary or other entry document by placing thereon the symbol ''J'' as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which reduced-duty treatment is claimed and

by placing thereon the reduced duty rate applicable to each such article.

(c) *Verification of reduced-duty claim.* Any claim for reduced-duty treatment under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable at the applicable non-ATPA rate.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: December 24, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE56

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Pecos Pupfish (Cyprinodon pecosensis) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Pecos pupfish (*Cyprinodon pecosensis*) as an endangered species without critical habitat under authority of the Endangered Species Act of 1973, as amended (Act). The historical range of the Pecos pupfish included the mainstream Pecos River and various lakes, gypsum sinkholes, saline springs, and tributaries associated with the river from the vicinity of Roswell, Chaves County, New Mexico, downstream to the vicinity of Sheffield, Pecos County, Texas. The Pecos pupfish has been replaced by sheepshead minnow (*C. variegatus*) x Pecos pupfish hybrids throughout more than two-thirds of its historical range. The Pecos pupfish was declining prior to introduction of the sheepshead minnow, primarily as a result of competition and depredation by nonnative fish species, and habitat loss caused by such factors as water diversion, groundwater depletion, channelization, and watershed disturbance (Sublette et al. 1990, Minckley et al. 1991). This proposal, if made final, will implement Federal protection provided by the Act for the Pecos pupfish.

DATES: Comments from all interested parties must be received by March 31, 1998. Public hearing requests must be received by March 16, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, Field Supervisor, Ecological Services Field Office (Albuquerque) (see **ADDRESSES** section) (telephone 505/761–4525).

SUPPLEMENTARY INFORMATION:

Background

The Pecos pupfish, described by Echelle and Echelle (1978), is a member of the family Cyprinodontidae. The taxonomic status of the Pecos pupfish had been uncertain for more than 30 years because of a previous description of a pupfish (*Cyprinodon bovinus*) from the Pecos River (Baird and Girard 1853). Type specimens from the Pecos River in the original series were lost or in poor condition, but were assumed to be the same as the Pecos pupfish until an extant population of *C. bovinus* was found at Leon Springs, Texas, and confirmed as different from the form in the Pecos River proper (Echelle and Miller 1974).

The Pecos pupfish is a small, deep-bodied (2.8 to 4.6 centimeter (cm) (1.1 to 1.8 inch (in.)) standard length) gray-to-brown fish. Male dorsal and anal fins are black almost to the margin with no yellow on the dorsal, anal, or caudal fins. The lateral bars on the female are typically broken into blotches ventrolaterally. The abdomen is generally naked (i.e., without scales) except for a few scales in front of the pelvic fins and a patch just behind the gill membrane isthmus. There are 20 to 21 gill rakers, and usually 3 or 4 preorbital pores on each side of the head (Echelle and Echelle 1978).

The Pecos pupfish is native to the Pecos River and its tributaries, and nearby lakes, sinkholes, and saline springs in New Mexico and Texas. The historical range of the species included the Pecos River from Bitter Lake National Wildlife Refuge and Bottomless Lakes State Park near Roswell, Chaves County, New Mexico, downstream approximately 650 km (404 mi) to the mouth of Independence Creek, southeast of Sheffield, Pecos County, Texas (Wilde and Echelle 1992). It was also found in gypsum sinkholes and saline springs at Bitter Lake National Wildlife Refuge (including the Salt Creek Wilderness Area); sinkholes and springs at Bottomless Lakes State Park (Brooks and Woods 1988); and in Salt Creek, Reeves County, Texas.

In Texas, genetically pure populations of the Pecos pupfish are now thought to occur only in the upper reaches of Salt Creek, Culberson and Reeves counties, Texas (Wilde and Echelle 1992) and, less probably, in 2 water-filled gravel pits owned by the Phipps Gravel Company, in Pecos County 10.8 km (6.7 mi) west of Grandfalls, Texas. In New Mexico, the species still occurs in the Pecos River from north of Malaga upstream to Bitter Lake National Wildlife Refuge. It continues to survive in the Salt Creek Wilderness Area (North Tract) of Bitter Lake National Wildlife Refuge, where it is found in sinkholes, springs and Salt Creek (Brooks and Woods 1988, Sublette et al. 1990, Hoagstrom and Brooks 1997). It is also found at Bottomless Lakes State Park. This range reduction represents a loss of more than two-thirds of the species' former range (Echelle and Connor 1989).

Previous Federal Actions

In both the December 30, 1982, Review of Vertebrate Wildlife, Notice of Review (47 FR 58454); and the September 18, 1985, Review of Vertebrate Wildlife, Notice of Review (50 FR 37958), the Pecos pupfish was included as a category 2 species. Category 2 candidates were those species for which the Service had information indicating that listing may be warranted but for which it lacked sufficient information on status and threats to support issuance of proposed listing rules. However, based on new information from more recent surveys, the Pecos pupfish was identified as a Category 1 candidate in the January 6, 1989, Animal Notice of Review (54 FR 554) and in the November 21, 1991, Animal Notice of Review (56 FR 58804). Category 1 candidates were those species for which the Service had on file sufficient information to support issuance of proposed listing rules. In the February 28, 1996, Candidate Notice of Review (61 FR 7596), the Service discontinued the designation of multiple categories of candidates, and only former category 1 species are now recognized as candidates for listing purposes. The Pecos pupfish remained as a candidate species in the February 28, 1996, Notice of Review (61 FR 7596) and in the September 19, 1997, Notice of Review (62 FR 49398).