



USAID
FROM THE AMERICAN PEOPLE

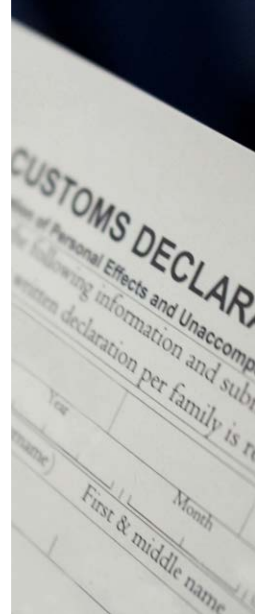
SOUTHERN AFRICA
TRADE
+INVESTMENT
HUB



The African Growth and Opportunity Act (AGOA) Export User Manual: A Practical Guide for Exports to the U.S.

BY THE USAID SOUTHERN AFRICA
TRADE AND INVESTMENT HUB

PUBLICATION DATE: OCTOBER 2020



FEED THE FUTURE
The U.S. Government's Global Hunger & Food Security Initiative

ACKNOWLEDGMENTS

On behalf of the United States Agency for International Development and in close collaboration with the USAID Southern Africa Trade and Investment Hub (USAID TradeHub), the African Growth and Opportunities Act (AGOA) Export User Manual was researched and developed by:

Consultant: Ms. Jan Forest (ICA-PRE-014-2020)
Customs and International Trade Attorney
Washington, DC
(202) 841-1060
jan@jforestconsulting.com

SPECIAL 'THANK YOU' TO:

Frances Fraser, Portfolio Manager at USAID TradeHub, for your leadership and vision for this document.

Michelle Pieterse, Graphic Designer, for lending your talent to make this a user-friendly publication.

U.S. Import Agents and U.S. Registrar Corp for providing valuable input and resources related to the Foreign Supplier Verification Program and the U.S. Food and Drug Administration, respectively. For more information and resources from U.S. Import Agents please see www.usimportagent.com and for Registrar Corp, please see www.registrarcorp.com.

LIMITATIONS AND DISCLAIMERS

This manual intends to act as an easy, step-by-step guide for any person or entity based in a sub-Saharan African country who is interested in exporting to the United States of America. It does not include all relevant documents, but instead directs users on where to go for the latest information, as both information and forms are frequently updated.

The consultant pulled and synthesized content from various sources and reflects the latest information available from those sources. Any misrepresentations are the sole responsibility of the consultant and does not represent the opinion of USAID.

PHOTO/IMAGE CREDITS

Sources of photography, forms and other images used in this manual are credited to:

- USAID Southern Africa Trade and Investment Hub
- www.shutterstock.com
- www.istockphoto.com

LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|-------|--|
| AofC | Affirmation of Compliance (codes) |
| AGOA | African Growth and Opportunity Act |
| APHIS | USDA Animal and Plant Health Inspection Service |
| AW | Water Activity |
| BRC | British Retail Consortium |
| CBP | U.S. Customs and Border Protection |
| CGMP | Current Good Manufacturing Practice |
| CIF | Cost, Insurance, Freight (charges) |
| DRV | Daily Reference Value |
| EIN | Employer Identification Number |
| FCE | Food Canning Establishment |
| FDA | U.S. Food and Drug Administration |
| FSIS | Food Safety and Inspection Service |
| FSMA | Food Safety Modernization Act |
| FSVP | Foreign Supplier Verification Program |
| FURLS | FDA Unified Registration and Listing System |
| GFSI | Global Food Safety Initiative |
| GSP | U.S. Generalized System of Preferences |
| HACCP | Hazard Analysis Critical Control Point |
| HS | Harmonized System |
| HTSUS | Harmonized Tariff Schedule of the United States |
| IRS | Internal Revenue Service |
| ISF | Importer Security Filing |
| ISO | International Organization for Standardization |
| LDC | Lesser Developed Countries |
| PCQI | Preventative Controls Qualified Individual |
| RACC | Reference Amount Customarily Consumed |
| RDI | Reference Daily Intake |
| SID | Scheduled Process Identification (number) |
| SSA | Sub-Saharan Africa(n) |
| SSN | Social Security Number |
| USAID | United States Agency for International Development |

TABLE OF CONTENTS

| | |
|---|----------|
| INTRODUCTION AND BACKGROUND | 2 |
| MODULE 1: | |
| The African Growth and Opportunity Act (AGOA) | 3 |
| 1.1 What is AGOA? | 3 |
| 1.2 General Eligibility Requirements | 3 |
| MODULE 2: | |
| The Fundamentals of U.S. Customs Laws and AGOA Eligible Products | 5 |
| 2.1 The United States Market Entry Process | 5 |
| 2.2 The Classification of Goods Under the Harmonized Commodity Description and Coding System | 10 |
| 2.3 The Valuation of Goods | 11 |
| 2.4 Determining the Country of Origin | 11 |
| MODULE 3: | |
| Exporting Agricultural Products or Food and Beverages to the U.S. | 14 |
| 3.1 FDA Registration | 14 |
| 3.2 Nutritional Labeling Requirements | 16 |
| 3.3 Food Safety Modernization Act (FSMA) | 19 |
| MODULE 4: | |
| Exporting Textiles and Wearing Apparel to the U.S. under AGOA | 21 |
| 4.1 Specific Rules for Textiles and Apparel | 21 |
| 4.2 Textiles as a Priority Issue for CBP | 24 |
| ANNEXURES: | |
| AGOA Export Fact Sheet 1: Determining AGOA Eligibility | 26 |
| AGOA Export Fact Sheet 2: Checklist for Non-Textile Exports | 27 |
| AGOA Export Fact Sheet 3: Rules and Eligibility Requirements for Textiles and Apparel | 28 |
| AGOA Export Fact Sheet 4: Required Documents for Shipments to the U.S. | 30 |

INTRODUCTION AND BACKGROUND

The purpose of the African Growth and Opportunity Act (AGOA) Export User Manual is to provide current and potential exporters to the United States of America (U.S.) with information needed to comply with requirements of U.S. customs laws and to take advantage of AGOA. As a practical document, it offers step-by-step guidance on what you need to know if you are interested in exporting goods to the U.S., including:

- Information on the entry process
- Classification
- Valuation of goods
- Determination of country of origin
- Admissibility of goods
- Assessment of duty

During the development of the manual, the [USAID Southern Africa Trade and Investment Hub \(USAID TradeHub\)](#) interviewed stakeholders from across eight sub-Saharan African (SSA) countries: Botswana, Eswatini, Lesotho, Namibia, Malawi, Mozambique, South Africa and Zambia. Through this qualitative research process, all interviews informed the design and function of the manual as a collective. The market actors included export firms with some export experience, trade and investment promotion agencies, business membership organizations and members of national-level AGOA steering committees.

There are two major categories of goods covered in this guide:

- 1. Agricultural and Food Products**
- 2. Textiles and Wearing Apparel**

The export of agricultural products requires consideration of the [U.S. Food and Drug Administration \(FDA\)](#).¹ requirements with respect to certification, nutrition labeling and prior notice for all foods products. Requirements for this category are covered in **Module 3**.

Module 4 covers textiles and wearing apparel and provides an overview of the special rules of origin for textiles and apparel, as well as the special rules regarding labeling of textile products. In addition to other labeling requirements, any product imported into the U.S. must be marked with its country of origin.

Other AGOA export resources, such as fact sheets and webinars, are available on the USAID TradeHub website at <http://www.satihub.com/>.



Introduction to the U.S. Food and Drug Administration

The United States Food and Drug Administration (FDA) is responsible for protecting the public health of American citizens, ensuring the security and safety of human and veterinary drugs, biological products, medical devices, food supply, cosmetics, tobacco and products that emit radiation.

The FDA also plays a significant role in advancing the capability of counterterrorism in the U.S. and fulfills this responsibility by ensuring the security of the food supply and by fostering development of medical products to respond to public health threats.

¹ U.S. Food and Drug Administration: <https://www.fda.gov/about-fda>

MODULE I: THE AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA)

OBJECTIVE

The aim of **Module I**, *The African Growth and Opportunity Act*, is to familiarize users with AGOA and the many benefits of exporting goods to the U.S. under the special preferences it provides.

LEARNING OUTCOMES

- Increased awareness and understanding of AGOA; and;
- Users informed of general eligibility requirements for duty-free treatment under AGOA.

I.1 What is AGOA?

Enacted on May 18, 2000, the African Growth and Opportunity Act (AGOA) is at the core of U.S. economic policy and commercial engagement with Africa. It provides eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products, in addition to the more than 5,000 products that are eligible for duty-free access under the Generalized System of Preferences (GSP) program. For this reason, AGOA is sometimes referred to as GSP plus. Many of the added products are import sensitive products not eligible for GSP, including textiles, apparel, watches, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and certain electronic, steel and glass products.

The AGOA legislation will be up for review on September 30, 2025.

I.2 General Eligibility Requirements

AGOA legislation aims to significantly enhance market access to the U.S. and bolster economic growth in SSA, while improving U.S. economic relations in the region. To qualify and remain eligible for AGOA, each country must demonstrate continual progress toward a market-based economy and be working to improve its rule of law, human rights, and respect for core labor

WHAT'S IN THIS MODULE?

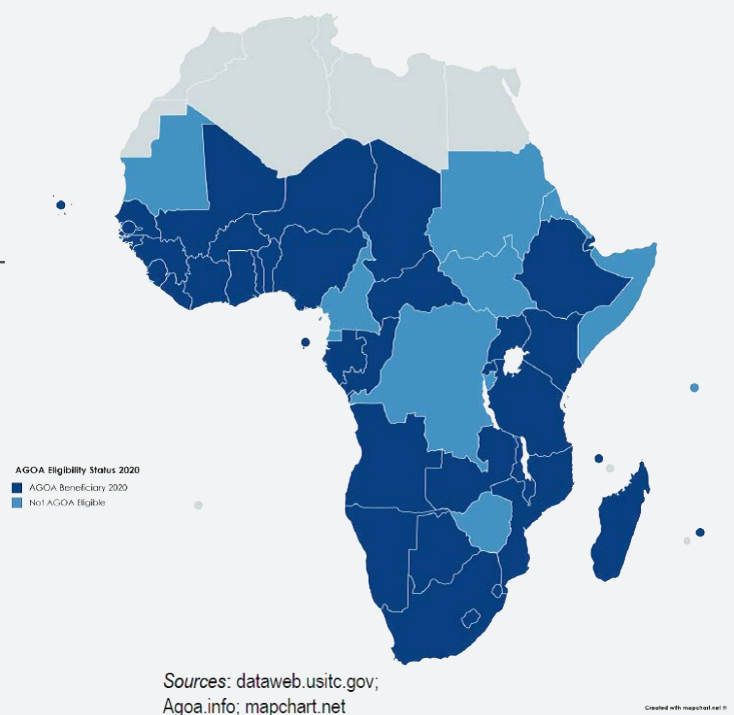
- I.1 What is AGOA?
- I.2 General Eligibility Requirements

standards. Additionally, countries must eliminate barriers to U.S. trade and investment, enact policies to reduce poverty, combat corruption and protect human rights.

For a product to be eligible for preferences under AGOA:

- The country of export must be eligible;
- The product must be eligible;
- The product must be imported directly from the SSA country; and
- The requirements of the rules of origin must be met.

Countries designated as beneficiary sub-Saharan African countries for AGOA purposes are listed in General Note 16 of the Harmonized Tariff Schedule of the United States (HTSUS) and include most countries in sub-Saharan Africa, as of 2020 (see **AGOA Export Fact Sheet I: Determining AGOA Eligibility**, for details).



Product eligibility can be determined by finding the proper tariff number for classification of the product and ascertaining whether there is a “D” in the “special” column in the tariff schedule. For non-textile goods, the “D” will appear in the “special” column if the product is eligible. For textile and apparel goods, it is necessary to review the rules found in [sub-Chapter XIX of Chapter 98 of the HTSUS](#).

The goods must be shipped directly from the SSA country to the United States, or, if they are shipped through an intermediate country, they cannot enter the commerce of the intermediary country. The origin rules for AGOA require that the product be entirely for the growth, product or manufacture of a beneficiary country or, if non-SSA components are present, the product be substantially transformed in a beneficiary country.

In addition, for goods that are not entirely the product of a beneficiary country, the sum of the direct costs of processing operations performed in the beneficiary country and the cost or value of the materials produced in the beneficiary country *must equal at least 35 percent* of the appraised value of the article. Eligible goods must be accompanied by a certificate of origin. The certificate need not be included in the entry documents, but it must be available upon request from U.S. Customs and Border Protection (CBP).

SUMMARY

For eligible sub-Saharan African countries, there are nearly 7,000 products listed under the Harmonized Tariff Schedule that may be exported duty-free to the United States.

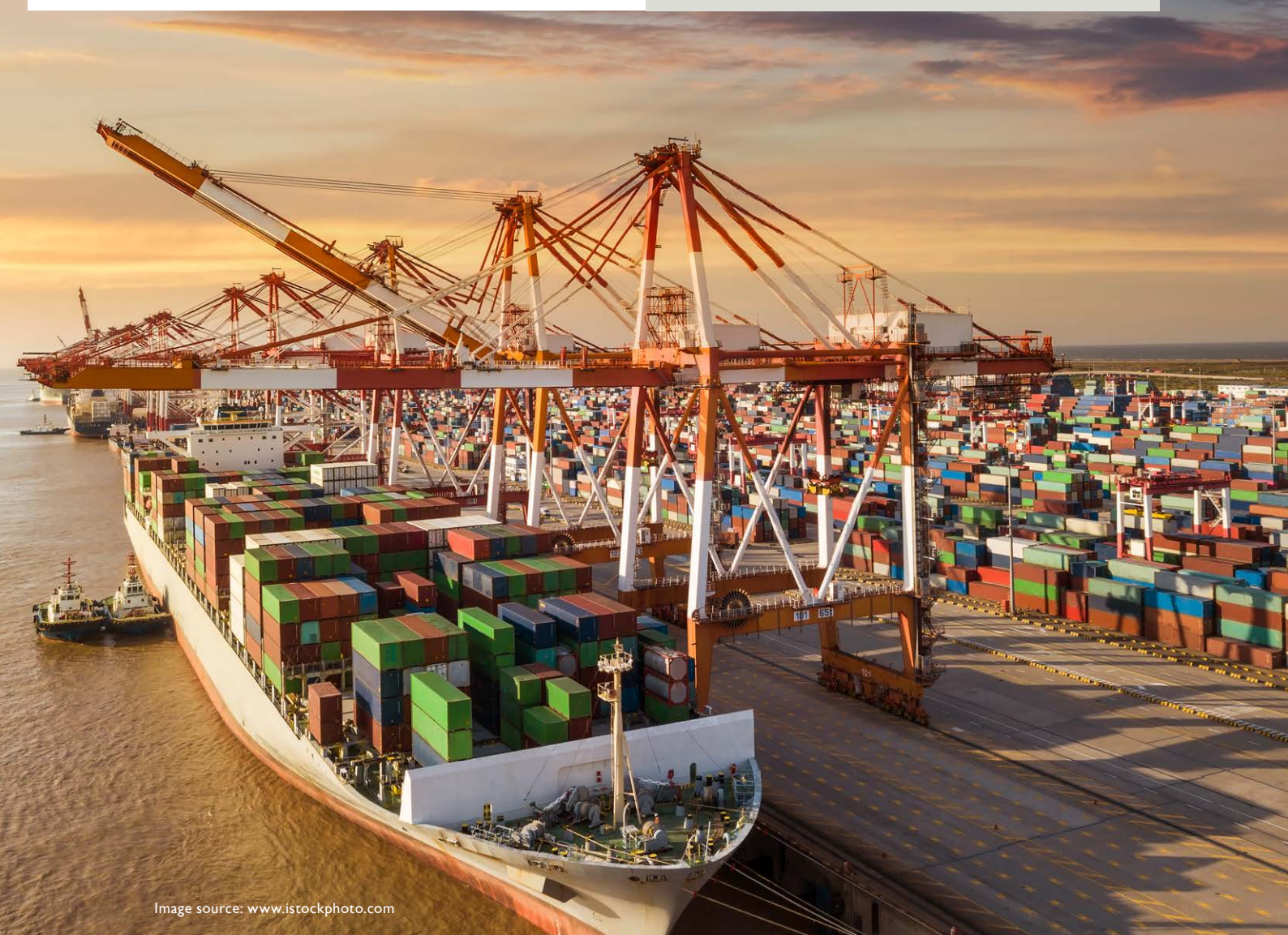


Image source: www.istockphoto.com

MODULE 2: THE FUNDAMENTALS OF U.S. CUSTOMS LAWS AND AGOA ELIGIBLE PRODUCTS

OBJECTIVE

The goal of Module 2, *The Fundamentals of U.S. Customs Laws and AGOA Eligible Products*, is to build understanding of the fundamental principles of AGOA and how preferences are applied.

LEARNING OUTCOMES

- Increased familiarity of key terms and a general understanding of U.S. customs law;
- Increased understanding of what U.S. market entry entails, particularly required documentation;
- Informed on the system for classifying goods;
- Enabled users to classify goods using the Harmonized Commodity Description and Coding System;
- Educated on how to calculate the valuation of goods;
- Informed how to determine the country of origin according to the specified rules, and;
- Raised awareness that some products require import licenses for entry to the U.S.

2.1 The United States Market Entry Process

The “importer of record” is responsible for clearing the goods through the U.S. Customs and Border Protection (CBP).³ The importer must file an “entry” when a shipment reaches the United States. The “entry” consists of the documents filed by the importer with CBP, and “making entry” is the process that connects the importer to CBP for purposes of legal liability. Only a person having the legal right to file an entry may do so. This includes the owner or purchaser of the goods or a licensed broker designated by the owner, purchaser, or consignee of the goods.

³ U.S. Customs and Border Protection: <https://www.cbp.gov/about>

WHAT'S IN THIS MODULE?

- 2.1 The United States Market Entry Process
- 2.2 Classification of Goods
- 2.3 Valuation of Goods
- 2.4 Determining Country of Origin

Some products are also subject to the rules and regulations of the Food and Drug Administration with additional requirements. These are addressed in **Module 3**, *Exporting Agricultural Products to the United States*.

An entry must be covered by an import or customs bond (see *CBP Form 301: Customs Bond*) to secure the payment of any future requirement to pay duties, taxes and fees with respect to the imported goods. A surety company may be used to issue the bond. The amount of the bond is based on risk guidelines, including the history of the importer.

The increased use of electronic filing has made the entry process faster, but because the process of clearing a shipment remains complicated, importers often use an in-house licensed customs broker or an outside customs brokerage service. A customs broker must have a valid license issued by CBP to transact customs business for other parties. The importer, however, always has the ultimate responsibility for any misstatements or mistakes in the entry.

United States Customs and Border Protection



Under the U.S. Department for Homeland Security, U.S. Customs and Border Protection (CBP) is responsible for “protecting the public from dangerous people and materials while enhancing America’s global economic competitiveness by enabling legitimate trade and travel.” CBP are a unified border entity combining customs, immigration, border security and agricultural protection into one coordinated activity.

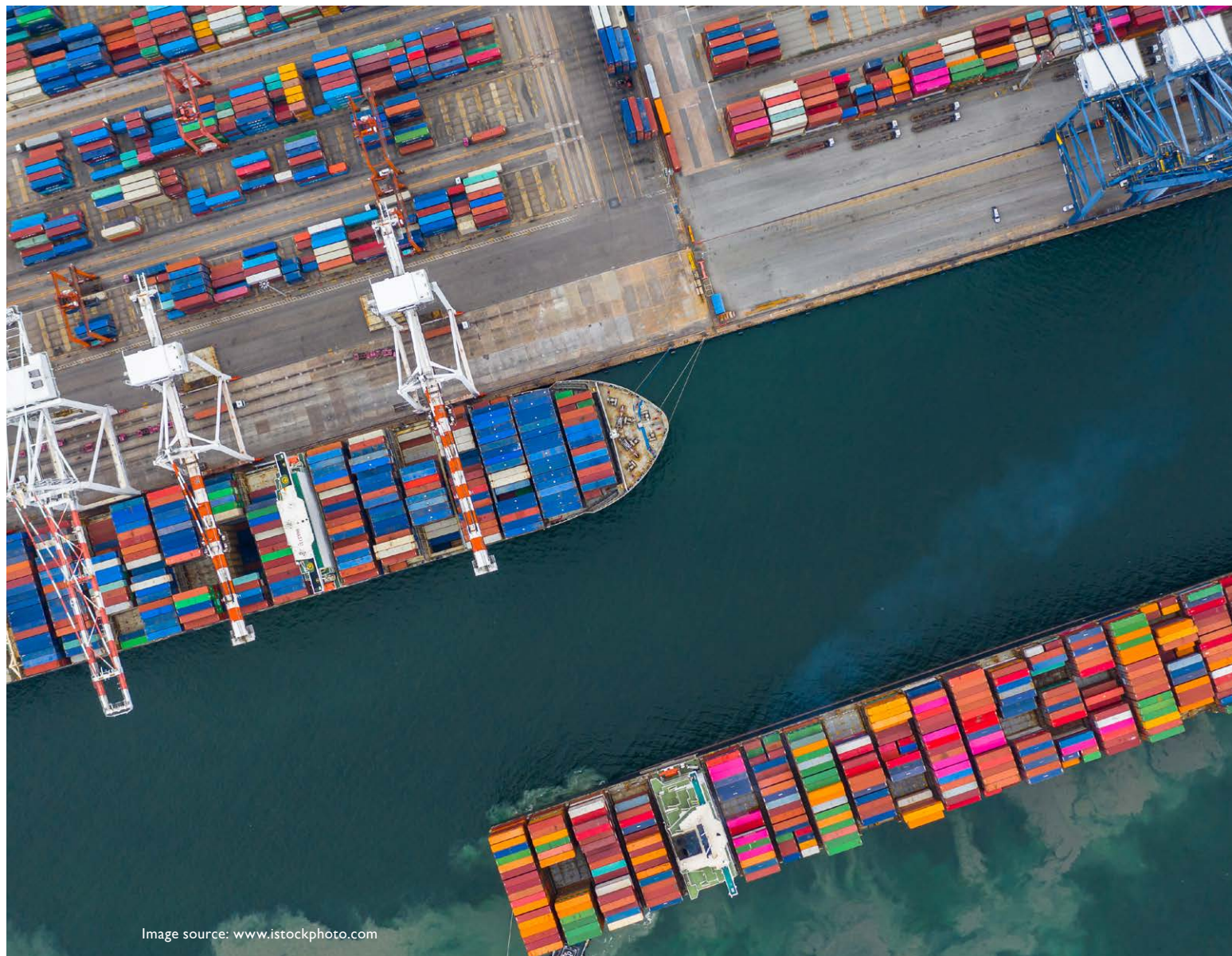


Image source: www.istockphoto.com

Under the Security and Accountability for Every Port Act (2006) (SAFE Port Act),⁴ CBP now requires importers to file certain data before cargo destined for the United States is laden on board a vessel at a foreign port. These are known as the Importer Security Filing (ISF) or “10+2”. This rule is focused on the importer with respect to compliance.

In addition to the CBP Security Filing, some items are also subject to “Prior Notice” with the Food and Drug Administration (FDA). Prior Notice is a notification to the FDA about a shipment that is on its way to the United States. Prior notice is even required when sending samples. Products can be detained in port if prior notice is not filed.

Prior notice may be filed by exporter, importer, or third party and includes information about the shipment and the facility.

What is Importer Security Filing?

Security Filing (also known as the “10+2” Initiative) is a CBP regulation that requires importers and vessel operating carriers to provide trade data to CBP *in advance of shipping*. The regulations relate to non-bulk cargo shipments arriving into the United States by vessel. Importers are required to electronically file an Importer Security Filing (ISF) comprised of 10 data elements (ISF-10) 24 hours prior to lading.⁵

⁴ Security and Accountability for Every Port Act 2006: https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-SPC/CG-CVC/CYCI/ocs/general/safeportact/Safe_Port_Act_2006.pdf

⁵ Lading: the action of loading a ship with cargo



1. **Importer of Record Number:** Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN) or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. The importer of record number can be a foreign entity. However, a U.S. entity must be provided for the consignee number element.



2. **Consignee Number:** Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN) or CBP assigned number of the individual(s) or firm(s) in the United States on whose account the merchandise is shipped.



3. **Seller (Owner) Name/Address:** Name and address of the last known entity by whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided. CBP will accept a DUNS number, a unique nine-digit number that identifies business entities, in lieu of the name and address.



4. **Buyer (Owner) Name/Address:** Name and address of the last known entity to whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided. CBP will accept a DUNS number in lieu of the name and address.



5. **Ship to Party:** Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody. CBP is looking for the actual name and address of the party who will receive the goods after clearance, not just the corporate address.



6. **Manufacturer (Supplier) Name/Address:** Name and address of the entity that last manufactures, assembles, produces, or grows the commodity; or name and address of the supplier of the finished goods in the country from which the goods are leaving. CBP will accept a DUNS number in lieu of the name and address.



7. **Country of Origin:** Country of manufacture, production, or growth of the article, based upon the import laws, rules and regulations of the United States.



8. **Commodity HTS-6:** Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the six-digit level. Alternatively, the filer may choose to provide the HTSUS number to the 10-digit level (see Section 2.2 of the HTS Classification).



9. **Container Stuffing Location:** Name and address(es) of the physical location(s) where the goods were stuffed into the container. For break bulk shipments, the name and address(es) of the physical location(s) where the goods were made “ship ready” must be provided. CBP will accept a DUNS number in lieu of the name and address.



10. **Consolidator (Stuffer) Name/Address:** Name and address of the party who stuffed the container or arranged for the stuffing of the container. For break bulk shipments, the name and address of the party who made the goods “ship ready” or the party who arranged for the goods to be made “ship ready” must be provided. If no consolidator is used, e.g., “factory load” shipments, provide the name/address of the manufacturer (supplier).

Entering merchandise requires the importer to provide sufficient information to admit and release the goods and for CBP to be able to determine the amount of duties, taxes and fees to be paid by the importer.

All ISF filings are to be done electronically via vessel [Automated Manifest System](#) (AMS) or the [Automated Broker Interface](#) (ABI), used by virtually all importers. There are no paper forms. An ISF filing covers a single “shipment” going to a single ISF Importer arriving on a single vessel voyage. One ISF can cover multiple bills as long as they are part of the same shipment going to the same importer of record and arriving on the same vessel/voyage.

CBP may withhold the release or transfer of the cargo until CBP receives the required information and has had the opportunity to review the documentation and conduct any necessary examination.

Entry Documents

The entry documents must include the manifest (see [CBP Form 7533](#)), or the Special Permit for Immediate Delivery (see [CBP Form 3461](#)) or some other form required by the port for release of the goods. The entry documents must also include the following:

- Evidence of the right to make entry (e.g., a properly endorsed bill of lading);
- Commercial invoice (or a *pro forma* invoice when the commercial invoice is not available);
- Packing list; and
- Any other documents needed to determine the admissibility of the goods (such as certifications required by other U.S. Government agencies).

It is also possible to file an entry on [CBP Form 3461](#) before the goods arrive in the U.S. in order to have immediate release of the goods. The entry documents must be filed within 15 calendar days after the imported merchandise arrives in the U.S.

The entry summary must be filed with the duty payment within 10 working days after entry, if filed separately from the entry documentation. It is also possible to file the entry summary and pay the estimated duties at the time of entry. The entry summary includes the documents previously filed at entry and the entry summary form [CF 7501](#). The statements made in the [CF 7501](#), including statements as to the classification, origin and value of the merchandise must be provided using reasonable care. Failure to use reasonable care in completing the form can result in penalties or delays in the release of the goods.

4 Tips for Complying with Importer Security Filing

- 1. Know what you are importing before you import it.** Identify the proper HTS numbers early in the process and consider a pre-classification system.
- 2. Decide who will transmit the ISF and how.** Consider using the Unified Entry Option.
- 3. Know your supply chain partners.** The shipper has access to important information.
- 4. Require that the new “10+2” data be collected and provided earlier in the process.** Add data to existing forms, e.g., purchase orders, advance shipping notices, commercial invoices.

Source: *Importer Security Filing and Additional Carrier Requirements, “10+2” Program Update (2010)*

WHAT IS REASONABLE CARE?

5 General Questions for Importers to Ask Themselves for All Transactions

1. Do you have access to the CBP Regulations (Title 19 of the Code of Federal Regulations), the Harmonized Tariff Schedule of the United States (HTS), and the U.S. Government Printing Office (GPO) publication Customs Bulletin and Decisions? Do you have access to the CBP website, Customs Rulings Online Search Service (CROSS), or other research service to permit you to establish reliable procedures and facilitate compliance with customs laws and regulations?
2. Has a responsible and knowledgeable individual within your organization reviewed the customs documentation prepared by you or your expert to ensure that it is full, complete and accurate? If that documentation was prepared outside your own organization, do you have a reliable system in place to ensure that you receive copies of the information as submitted to CBP; that it is reviewed for accuracy; and that CBP is timely apprised of any needed corrections?
3. If you use an expert to assist you in complying with customs requirements, have you discussed your importations in advance with that person and have you provided that person with full, complete and accurate information about the import transactions? Do you follow the advice received from your expert and keep a written record of that advice?
4. Do you have a customs compliance program and procedures in place to ensure that your entries are submitted correctly? Are they accessible to all employees who are involved in the importation process?
5. Are identical transactions or merchandise handled differently at different ports or within the same Center of Excellence and Expertise? If so, have you brought this to the attention of the appropriate CBP officials?

The above list is from CBP “What Every Member of the Trade Community Should Know: Reasonable Care” (September 2017), Informed Compliance Publication. For more guidance, refer to <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/icprescare2017revision.pdf>

Payment of Duties

The duties paid with the entry are called “estimated duties” because they are not the final assessment of duties due by CBP. The entry remains “unliquidated” for 314 days. The information in the entry can be revised by the importer or CBP until the entry is finalized (“liquidated”). Until liquidation of the entry occurs, the duties may be refunded if overpaid or billed to the importer if underpaid.

If the importer wants to challenge the assessment made by CBP a protest must be filed within 180 days of “liquidation.” CBP is

bound by the liquidation unless a violation of the law has occurred, such as where the importer made false statements in the entry. A protest can be filed by any of the following:

- a) The importers or consignees shown on the entry papers, or their sureties;
- b) Any person paying any charge or exaction;
- c) Any person seeking entry or delivery; or
- d) Any authorized agent of any of the persons described above.

The form to be used is the [CBP Form 19](#). The form sets out what may be protested, who may file a protest, when and where to file.

Types of Clearance

Goods may be entered for consumption, entered for warehouse at the port of arrival, or transported in-bond to another port of entry. Most are entries for consumption.

Storing of Documents

The U.S. requires the keeping of records and the rendering of those records for examination and inspection by anyone who imports merchandise into the U.S. It includes any records that are normally kept in the ordinary course of business. These documents include, but are not limited to:

- Entry summary
- Bond information
- Correspondence
- Binding rulings
- Certificate of origin
- Commercial invoice or *pro forma* invoice
- Packing list
- Manifests
- Bill of lading.

These records must be retained for five years after entry. CBP may request to see these documents and they must be provided to CBP “within a reasonable period of time after demand.”

2.2 The Classification of Goods Under the Harmonized Commodity Description and Coding System

All goods imported into the United States are subject to duty or are duty-free in accordance with their classification.

The United States uses the Harmonized Commodity Description and Coding System (Harmonized System or HS) to classify goods. The HS provides for common classifications for all goods for all countries. It is in effect in over 200

countries, including the U.S. and most countries in Africa. The first 6 digits of the HS are used internationally. Digits 7 and 8 are for use by individual countries. Digits 9 and 10 in the U.S. are for statistical purposes.

Critical Elements to Successful Entry

1. Classification of goods
2. Valuation of goods
3. Country of origin
4. Admissibility

The current version of the Harmonized Tariff Schedule of the United States can be accessed at <https://hts.usitc.gov/current>. An example of a page from the current HTSUS can be seen below.

Harmonized Tariff Schedule of the United States (2020) Revision 19

Annotated for Statistical Reporting Purposes

IV
20-26

| Heading/ Subheading | Stat. Suf- fix | Article Description | Unit of Quantity | Rates of Duty | | 2 |
|------------------------|----------------------|--|------------------------|-------------------|---|-----|
| | | | | General | Special | |
| 2008 (con.) | | Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: (con.) | | | | |
| | | Other, including mixtures other than those of subheading 2008.19: | | | | |
| 2008.91.00 | 00 | Palm hearts..... | kg..... | 0.9% ² | Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, S, SG) | 35% |
| 2008.93.00 | 00 | Cranberries (<i>Vaccinium macrocarpon</i> , <i>Vaccinium oxycoccos</i> , <i>Vaccinium, vitis-idaea</i>)..... | kg..... | 4.5% ¹ | Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, S, SG) | 35% |
| 2008.97 2008.97.10 | | Mixtures: In airtight containers and not containing apricots, citrus fruits, peaches or pears..... | | 5.6% ¹ | Free (A+, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, S, SG) | 35% |
| | 20 | Prepared cereal products..... | kg | | | |

As noted, the rates of duty appear in Column 1 and 2 of the HTSUS. Column 1 is divided into General rates (normal trade relation rates) and special rates (free or reduced duties for special programs). AGOA eligibility is indicated by a “D” in the “special” column or is determined in accordance with the special rules for textiles and wearing apparel contained in Chapter 98 of the HTSUS. Column 2 indicate duty rates that are applied to countries not given most-favored nation duty treatment. Currently these rates apply to Cuba and North Korea.

U.S. Customs and Border Protection rulings should also be consulted when in doubt about the correct classification for a product. These can be accessed on an online search tool (<https://rulings.cbp.gov/>). Other useful tools include the product search tool found at <https://hts.usitc.gov/>, and the learning tool found at www.usitc.gov/elearning/hts/menu.

2.3 The Valuation of Goods

The preferred method for valuation of the goods is based on the transaction value. The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts for certain items not already included in the price. These extra costs might include:

- Packing costs incurred by the buyer;
- Selling commissions incurred by the buyer;
- Value of any assist (such as a mold);
- Royalty or license fees that the buyer is required to pay as a condition of the sale; and
- Proceeds to the seller from any subsequent resale, disposal, or use of the imported merchandise.

The price actually paid or payable for the imported merchandise is the total payment, excluding international freight, insurance and other CIF charges that the buyer makes to the seller and it is usually represented by the invoice price.

In cases where the transaction value cannot be used (such as in related party transactions), another valuation method may be used. These might include:

- Transaction value of identical or similar goods;
- Deductive value (U.S. resale price less certain costs);
- Computed value (cost of materials, processing, general expenses and profit); or
- Fallback method (other reasonable method).

2.4 Determining the Country of Origin

The general rule is that a product will be considered the product of the country where it was grown, manufactured or processed OR where it was substantially transformed (given a new name, character or use). The origin of merchandise that is imported into the customs territory of the United States can affect the rate of duty, entitlement for special programs, admissibility, quota, anti-dumping or countervailing duties, procurement by government agencies and marking requirements.



There are two basic types of rules of origin: **non-preferential** and **preferential**.

Non-preferential rules generally apply to country of origin marking requirements, which require that each article produced abroad and imported into the United States must be marked with the English name of the country of origin (the country where the article was grown, manufactured or produced) to indicate to the ultimate purchaser in the United States the country of manufacture or production of the article. Some articles are not required to be marked to indicate country of origin, but in these cases, the outermost containers in which the articles ordinarily reach the ultimate purchaser in the United States must be marked to indicate the English name of the country of origin of the articles.

Preferential rules of origin are applied to merchandise entering under a trade agreement or special legislation, such as the Generalized System of Preferences (GSP) or the African Growth and Opportunity Act (AGOA). These rules are generally based on a combination of a non-preferential rule (country of manufacture, production or growth OR country where substantially transformed) and a minimum value content. Substantial transformation requires that a new article with a different name, character and use is created. For GSP where product inputs are imported into the beneficiary country, there must be a substantial transformation and the sum of the cost of materials produced in the beneficiary country plus the costs of processing must equal at least 35% of the entered value of the product in the U.S. An excerpt of the [GSP Certificate of Origin](#) is shown in the below image.

| | | | | | |
|--|----------------------------------|--|---|-----------------------------------|---------------------------------|
| 1. Goods consigned from (Exporter's business name, address, country) | | | Reference No | | |
| 2. Goods consigned to (Consignee's name, address, country) | | | GENERALIZED SYSTEM OF PREFERENCES CERTIFICATE OF ORIGIN (Combined declaration and certificate) FORM A Issued in (country) See notes overleaf | | |
| 3. Means of transport and route (as far as known) | | | | | |
| 4. For official use | | | | | |
| 5. Item number | 6. Marks and numbers of packages | 7. Number and kind of packages, description of goods | 8. Origin criterion (see Notes overleaf) | 9. Gross weight or other quantity | 10. Number and date of invoices |

The rules for AGOA are similar for non-textile products, but U.S. content can be included under AGOA (up to 15% of value). There are also special rules of origin for textile and apparel articles, provided for in Chapter 98, sub-Chapter XIX of the HTSUS.

Admissibility

Goods may be prohibited or not allowed to enter the U.S. In this case, the CBP will deny entry at the border for prohibited goods. Goods may also be restricted and would therefore require a license or permit to import into U.S. CBP will require the proper license or permit at the border.

The determination for restricted goods is made by other United States Government agencies such as [Food and Drug Administration](#) (FDA) and [United States Department of Agriculture](#) (USDA).

SUMMARY

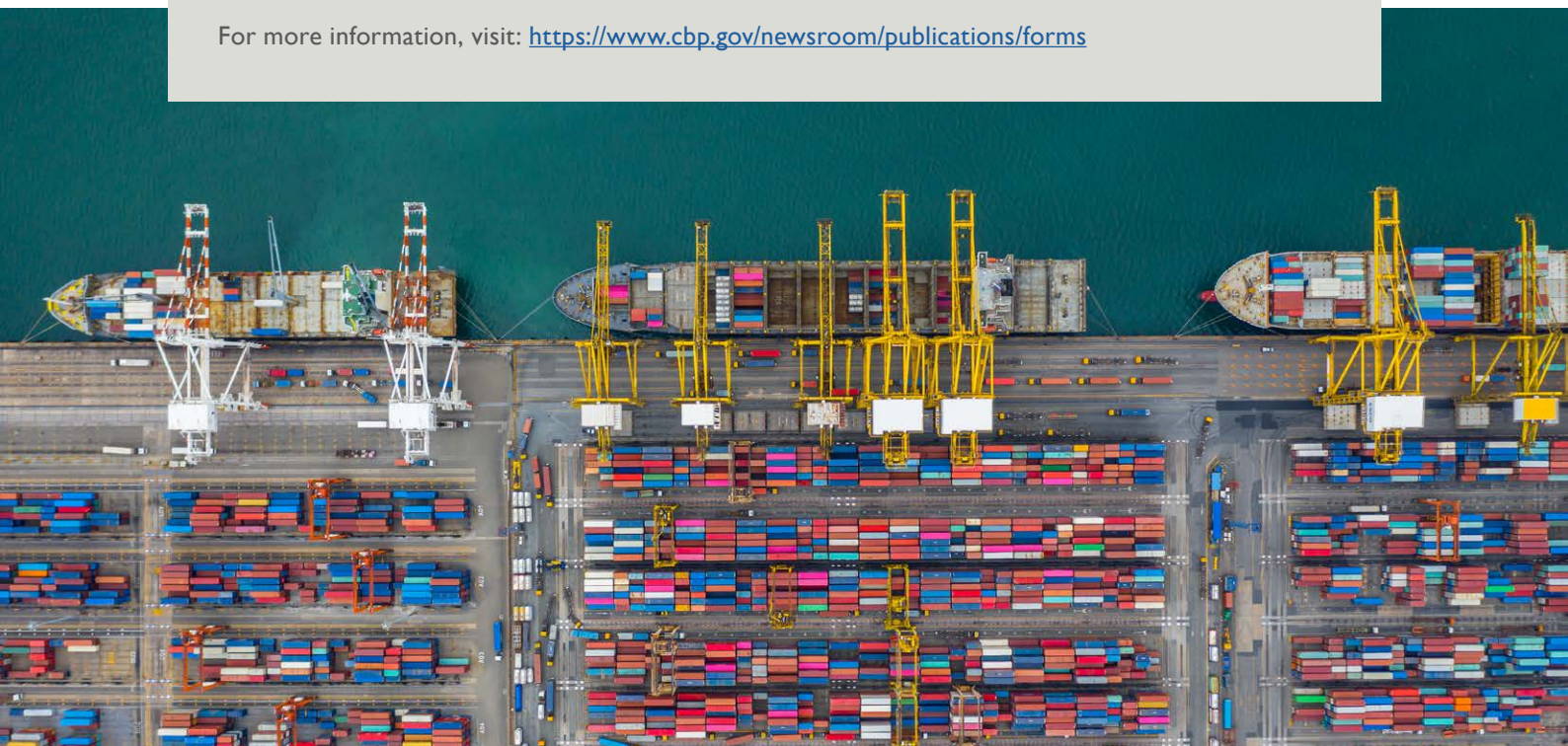
Market entry into the United States requires that exporters and importers follow the market entry process to ensure smooth admission upon arrival.

Key Documents for Market Entry Checklist

There are several key documents that are needed as part of the market entry process as mentioned above. In summary they are:

- Entry Summary (Customs and Border Protection (CBP) [Form 7501](#))
- Evidence of right to make entry (Bill of Lading)
- Evidence of Bond ([CBP Form 301](#))
- Commercial invoice
- Packing list (showing quantity, Harmonized Tariff System (HTSUS) code number, item description, unit cost, total cost)
- Other documents necessary to determine admissibility (permits, licenses for specific types of products)

For more information, visit: <https://www.cbp.gov/newsroom/publications/forms>



MODULE 3: EXPORTING AGRICULTURAL PRODUCTS OR FOOD AND BEVERAGES TO THE U.S.

OBJECTIVE

The goal of **Module 3**, *Exporting Agricultural Products or Food and Beverages to the U.S.*, is to provide more specific information on the U.S. market entry requirements for agricultural products, food and beverages.

LEARNING OUTCOMES

- Increased understanding of the general legal framework for importing agricultural commodities,
- food or beverages into the U.S.;
- Informed on where to go to register with the Food and Drug Administration;
- Increased knowledge about specific import requirements for agricultural, food and beverage products;
- Raised awareness of the food labeling requirements for the U.S market.

Other U.S. Agencies Involved with Exports

Importing agricultural and food products into the U.S. requires compliance with the regulations of other U.S. government agencies outside of U.S. Customs and Border Protection. CBP enforces the laws of these agencies at the border. The relevant agencies include the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA). USDA also includes the Animal and Plant Health Inspection Service (APHIS) and the Food Safety and Inspection Service (FSIS).

3.1 FDA Registration

The Bioterrorism Preparedness and Response Act (BTA) (2002) covers all food for human or animal consumption. Under the Bioterrorism Act, all facilities, foreign and domestic, that take physical

WHAT'S IN THIS MODULE?

- 3.1 FDA Registration
- 3.2 Nutritional Labeling Requirements
- 3.3 Food Safety Modernization Act (FSMA)
- 3.4 Determining Country of Origin

possession of food intended for human or animal consumption in the United States must register with FDA. Any entity that manufactures, processes, packs, labels or holds food must register with the FDA. Registration is not a permit or approval – it is simply the act of providing your facility's information to FDA so that the Agency can reach you in the event of a food-related emergency.

Foreign facilities must designate a U.S. Agent to manage routine and emergency communication with FDA. Registration is only required for facilities that come into direct physical contact with food. Sales offices and trading companies are exempt from registration requirements, as are personal residences, transportation companies, farms, retail food establishments, fishing vessels that do not engage in processing onboard the vessel, and facilities that are entirely regulated by the USDA. There are no fees for registration, registration renewal or updates to a registration, unless an exporter opts to pay a specialized firm (i.e., U.S. import agent or Registrar Corp) to assist with the registration process.

Prior Notice

The BTA also requires prior notice of shipments of food to the U.S. This process is even required for samples. Failure to comply will lead to detention of the products in port. Registration instructions can be found at: <https://www.fda.gov/food/importing-food-products-united-states/quick-start-guide-prior-notice-food-articles-prior-notice-system-interface-pnsi>.

The filing process includes information about the shipment and the facility and may be filed by exporter, importer or third party. There is no fee for filing prior notice of imported food. For more information about prior notice, visit: <https://www.fda.gov/food/importing-food-products-united-states/prior-notice-imported-foods>.

Registration of Food Facilities

The Food Safety Modernization Act (FSMA) (2011) requires additional information from facilities dealing with food for consumption in the U.S. These include the registration of foreign food facilities and allowing the FDA to inspect foreign food facilities. The purpose of the FSMA is to ensure that the U.S. food supply is safe by shifting the focus of federal regulators from responding to contamination to preventing it.

Under FSMA, facilities must renew their registrations every two years, on even-numbered years, between October 1 and December 31. As a part of the renewal process, facilities must affirm that they consent to FDA inspection, “at the time and in the manner permitted by the Federal Food, Drug, and Cosmetic Act.” Any registration that is not renewed before the deadline is removed from FDA’s database, effectively prohibiting shipments into the United States.

FDA’s Final Rule for Food Facility Registration includes two verification steps. For foreign facilities, FDA will send an email to the designated U.S. Agent with a receipt code. The U.S. Agent must access FDA’s Unified Registration and Listing System (FURLS), navigate the interface, submit the receipt code, and agree to the U.S. Agent designation. For facilities whose registrations, renewals, updates or cancellations are submitted by an authorized third party, FDA will send an email to the owner, operator or agent in charge of the facility with a receipt code. The owner, operator or agent in charge of the facility must access FURLS, navigate the interface, submit the receipt code, and agree that the third-party submission is authorized. FDA believes that these verification steps will aid the agency to verify that the individual submitting the registration information is authorized to do so and that a U.S. Agent is not designated without consent.

| FDA Registration Statistics | | | |
|-----------------------------|----------------------|---------------|--------|
| Country | Registration Numbers | | Delta |
| | January 2016 | February 2017 | |
| Australia | 1,656 | 1,140 | (-31%) |
| Botswana | 2 | 1 | (-50%) |
| India | 4,087 | 3,224 | (-21%) |
| Madagascar | 121 | 90 | (-26%) |
| Namibia | 12 | 7 | (-42%) |
| South Africa | 1,004 | 797 | (-31%) |
| Zimbabwe | 11 | 9 | (-18%) |

Source: Registrar Corp, August 2020

Food Canning Establishments (FCE) Registrations

“The FDA requires companies that produce certain shelf-stable, hermetically-sealed, low-acid canned or acidified foods to obtain a Food Canning Establishment (FCE) registration. In addition, manufacturers must file documentation with the FDA for each process used in the production of foods subject to these requirements. These “Process Filings” are assigned unique “Submission Identifier” (SID) numbers. SIDs must be submitted as “Affirmation of Compliance” (AofC) codes when importing these products into the United States.”

(Registrar Corp, 2020, www.fcwizard.com). This requirement relates to products in cans, glass, semi-rigid and flexible pouches.

Low-acid canned food would normally have a final pH level greater than 4.6 (and certain tomato products > 4.7). In addition, water activity (aw) would be greater than 0.85. Typical products include green olives in brine, artichokes, figs in syrup and roasted peppers.

Acidified food would have a final pH of less than or equal to 4.6 and water activity (aw) greater than 0.85.

5 Tips for Food Canning Establishment Registration

1. Information in FCE registration must match that in the food facility registration.
2. Process filings (aka “SIDs”) are required for each and every product and package size.
3. Be sure to follow the scheduled process on file with FDA (they will look carefully during an inspection).
4. For more information and to identify whether your products are subject to FCE-SID regulations, go to: www.fcewizard.com. You will receive a PDF report detailing the possible requirements.
5. To verify if a particular SID is currently on file in FDA’s database and to avoid time-consuming detentions and entry errors at port, go to www.sidverifier.com

3.2 Nutritional Labeling Requirements

Specific nutritional labelling is required when importing food into the U.S. For information in this regard see <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-food-labeling-guide>.

Failure to comply with these rules can lead to the detention of products in port. In May 27, 2016, FDA issued two final rules that updated the nutrition facts label, serving sizes and more.

For example, there are:

- New mandatory declarations related to vitamin D, potassium and added sugars
- Vitamin A and C declarations are now voluntary
- Calories from fat may no longer be declared
- New definition for “dietary fiber”
- New units for vitamin D, niacin, vitamin A, vitamin E and folate/folic acid

Please see below figures for examples of the old and new label formats:

Old Format

| Nutrition Facts | |
|--|------------------------------|
| Serving Size 2/3 cup (55g) Servings Per Container About 8 | |
| Amount Per Serving | |
| Calories 230 | Calories from Fat 72 |
| % Daily Value* | |
| Total Fat 8g | 12% |
| Saturated Fat 1g | 5% |
| Trans Fat 0g | |
| Cholesterol 0mg | 0% |
| Sodium 160mg | 7% |
| Total Carbohydrate 37g | 12% |
| Dietary Fiber 4g | 16% |
| Sugars 1g | |
| Protein 3g | |
| Vitamin A | 10% |
| Vitamin C | 8% |
| Calcium | 20% |
| Iron | 45% |
| * Percent Daily Values are based on a 2,000 calorie diet. Your daily value may be higher or lower depending on your calorie needs. | |
| | Calories: 2,000 2,500 |
| Total Fat | Less than 65g 80g |
| Sat Fat | Less than 20g 25g |
| Cholesterol | Less than 300mg 300mg |
| Sodium | Less than 2,400mg 2,400mg |
| Total Carbohydrate | 300g 375g |
| Dietary Fiber | 25g 30g |

New Format

| Nutrition Facts | |
|---|----------------------|
| 8 servings per container | |
| Serving size | 2/3 cup (55g) |
| Amount per serving | |
| Calories | 230 |
| % Daily Value* | |
| Total Fat 8g | 10% |
| Saturated Fat 1g | 5% |
| Trans Fat 0g | |
| Cholesterol 0mg | 0% |
| Sodium 160mg | 7% |
| Total Carbohydrate 37g | 13% |
| Dietary Fiber 4g | 14% |
| Total Sugars 12g | |
| Includes 10g Added Sugars | 20% |
| Protein 3g | |
| Vitamin D 2mcg | 10% |
| Calcium 260mg | 20% |
| Iron 8mg | 45% |
| Potassium 235mg | 6% |
| * The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice. | |

The changes to the labeling relate to the order of nutrients, the addition of the foot note, the font sizes of the declarations and the quantitative amounts of certain vitamins/minerals required.

FDA updated the Daily Reference Value (“DRV”) and Reference Daily Intake (“RDI”) values for many nutrients, such as:

- Total Fat (78g)
- Total Carb (275g)
- Sodium (2300mg)
- Potassium (4700mg)
- Calcium (1300mg)
- Dietary Fiber (28g)

FDA established a DRV for added sugars at 50g. This impacts the declaration of % DV and whether a product can make certain health and nutrient content claims.

Furthermore, certain Reference Amount Customarily Consumed (RACCs) were changed. For example:

- Beverage increased from 240ml to 360ml (such as sodas)
- “All other candies” decreased from 40g to 30g
- Ice cream increased from 1/2 to 2/3 cup
- New RACC category for “appetizers” established (85 g, or 120g with sauce)
- New RACC category for “after-dinner confectionary” (10g)

| Nutrition Facts | |
|---|----------------------|
| 8 servings per container | |
| Serving size | 2/3 cup (55g) |
| Amount per serving | |
| Calories | 230 |
| % Daily Value* | |
| Total Fat 8g | 10% |
| Saturated Fat 1g | 5% |
| <i>Trans Fat</i> 0g | |
| Cholesterol 0mg | 0% |
| Sodium 160mg | 7% |
| Total Carbohydrate 37g | 13% |
| Dietary Fiber 4g | 14% |
| Total Sugars 12g | |
| Includes 10g Added Sugars | 20% |
| Protein 3g | |
| Vitamin D 2mcg | 10% |
| Calcium 260mg | 20% |
| Iron 8mg | 45% |
| Potassium 235mg | 6% |
| * The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice. | |

Simplified Vertical Format

Some changes to other formats are permitted for special packaging, as illustrated in the figures on this page.

| Nutrition Facts | | | | |
|---------------------------|----------------|--------------------------|--------------|-------------|
| 12 servings per container | | | | |
| Serving size | | 1/2 muffin (114g) | | |
| Calories | Per 1/2 muffin | | Per 1 muffin | |
| | 380 | | 760 | |
| | | % DV* | | % DV* |
| Total Fat | 16g | 21% | 32g | 41% |
| Saturated Fat | 3g | 15% | 6g | 30% |
| <i>Trans Fat</i> | 0g | | 0g | |
| Cholesterol | 50mg | 17% | 100mg | 33% |
| Sodium | 480mg | 21% | 960mg | 42% |
| Total Carb. | 56g | 20% | 112g | 41% |
| Dietary Fiber | 2g | 7% | 4g | 14% |
| Total Sugars | 32g | | 64g | |
| Incl. Added Sugars | 30g | 60% | 60g | 120% |
| Protein | 3g | | 6g | |
| Vitamin D | 0.1mcg | 0% | 0.2mcg | 2% |
| Calcium | 40mg | 4% | 80mg | 6% |
| Iron | 2mg | 10% | 4mg | 20% |
| Potassium | 190mg | 4% | 380mg | 8% |

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

1 Dual Column Format

| Nutrition Facts | | Servings: 12, Serv. size: 1 mint (2g), | |
|--|--|---|--|
| Amount per serving: Calories 5, Total Fat 0g (0% DV), Sat. Fat 0g (0% DV), | | | |
| <i>Trans Fat 0g, Cholest. 0mg (0% DV), Sodium 0mg (0% DV), Total Carb. 2g (1% DV),</i> | | | |
| Fiber 0g (0% DV), Total Sugars 2g (Incl. 2g Added Sugars, 4% DV), Protein 0g, | | | |
| Vit. D (0% DV), Calcium (0% DV), Iron (0% DV), Potas. (5% DV). | | | |

2 Linear Display Format

| Nutrition Facts | Amount/serving | % DV | Amount/serving | % DV |
|---|---|---------------------|------------------------|------------------------|
| | 5 servings per container Serving size 1/6 cup (28g) Calories per serving 90 | Total Fat 2g | 3% | Total Carb. 15g |
| Sat. Fat 1g | | 5% | Fiber 0g | 0% |
| <i>Trans Fat 0.5g</i> | | | Total Sugars 14g | |
| Cholesterol 10mg | | 3% | Incl. 13g Added Sugars | 26% |
| Sodium 200mg | | 9% | Protein 3g | |
| Vitamin D 0% • Calcium 6% • Iron 6% • Potassium 10% | | | | |

3 Tabular Format

Compliance Dates for Nutritional Labeling

On September 29, 2017, FDA proposed to extend the compliance date to January 1, 2020. Small businesses would have until January 1, 2021. The original compliance date was July 26, 2018 (July 26, 2019 for small businesses). The definition of a small business is a manufacturer with less than \$10 million in annual food sales

3.3 Food Safety Modernization Act (FSMA)

The Food Safety Modernization Act (FSMA) is the biggest change to U.S. food legislation and regulation in 70 years. It addresses five key areas, namely:

- Preventative controls for human and animal health for U.S. facilities
- Foreign Supplier Verification Program (FSVP) for suppliers outside of the U.S.
- Intentional adulteration of food
- Sanitary transport of human and animal food
- Produce safety for human and animal food

The focus of the guideline is on the FSVP with brief information of preventative controls for U.S. facilities.

Preventative Controls

The most important take-away from this section on the Preventive Controls for Human Food Rule is that all facilities that manufacture, process, pack, or hold food for consumption in the U.S. must write and implement a Food Safety Plan that covers all the products to be consumed in the U.S. Although many foreign suppliers have British Retail Consortium (BRC), International Organization for Standardization (ISO) 22,000, Global Food Safety Initiative (GFSI), Hazard Analysis Critical Control Point (HACCP) or other recognized food safety certifications, these do not meet the new FSMA standard as currently none of these auditing schemes cover Food Safety Plans. If a company chooses to rely on a non-FDA mandated food safety scheme and does not create a Food Safety Plan per FDA requirements, there may be regulatory action from the FDA, including warning letters, detentions in port of entry, suspension of registration (essentially prohibiting the company from distributing food into commerce) and import alerts.

Foreign Supplier Verification Program (FSVP)

There are many entities involved in the supply chain when it comes to foreign food supply, such as the FDA, brand owner, foreign supplier, owner/consignee (importer), FSVP agent, storage and warehousing, co-manufacturer, co-packer/co-labeler, customs broker and transporter. It is important to understand who is responsible for what in the process. Ultimately, the FDA is most interested in the U.S.-based FSVP importer and the registered foreign facility, but holds the importer accountable for compliance.

Important definitions:

Importer of record:

Entity that imported the goods

Owner/consignee:

Entity that paid for goods

FSVP importer:

Entity responsible for food safety

Foreign facility:

Last entity of processing/ packing

Key Requirements of the FSVP

There are certain key components contained in the FSVP that need to be verified by the FSVP importer by law. Where there is no FSVP importer, an agent can be appointed.

These requirements include:

- Current good manufacturing practice (CGMP) such as training, hygiene and allergens
- Preventative controls based on a Food Safety Plan
- Acceptable hazard analysis
- Allergen controls
- Product labeling
- Supply chain control
- Food safety training (ideally to qualify as a Preventative Controls Qualified Individual (PCQI))
- Recall plan

The FDA enforces FSMA through rigorous physical inspections along the entire supply chain including foreign food facilities, foreign dietary supplements

facilities, foreign packers and labelers, foreign storage and distribution facilities, the U.S. importer, the U.S. FSVP agent and U.S. domestic facilities. The FDA also works closely with CBP. FSVP compliance is mainly about the records and verification activities of the importer. **Be sure to keep evidence related to all actions taken to ensure food safety.**

Failure to comply with these requirements can lead to the issuance of a '483 warning letter' to the importer. If such a letter is issued, there is a time limited response required, which usually involves a significant amount of work and failure to respond can lead to an import ban. If an importer is added to the 'Red List,' all future imports will automatically be detained, and prosecution can follow. As a foreign supplier it is in your direct interest to ensure that everything is in order with your importer.

Additional Resources

The [Animal and Plant Health Inspection Service \(APHIS\)](#) enforces phytosanitary regulations to safeguard the health of agricultural resources, including plants and animals and all products derived from plants and animals. A link to the permit requirements can be found at:

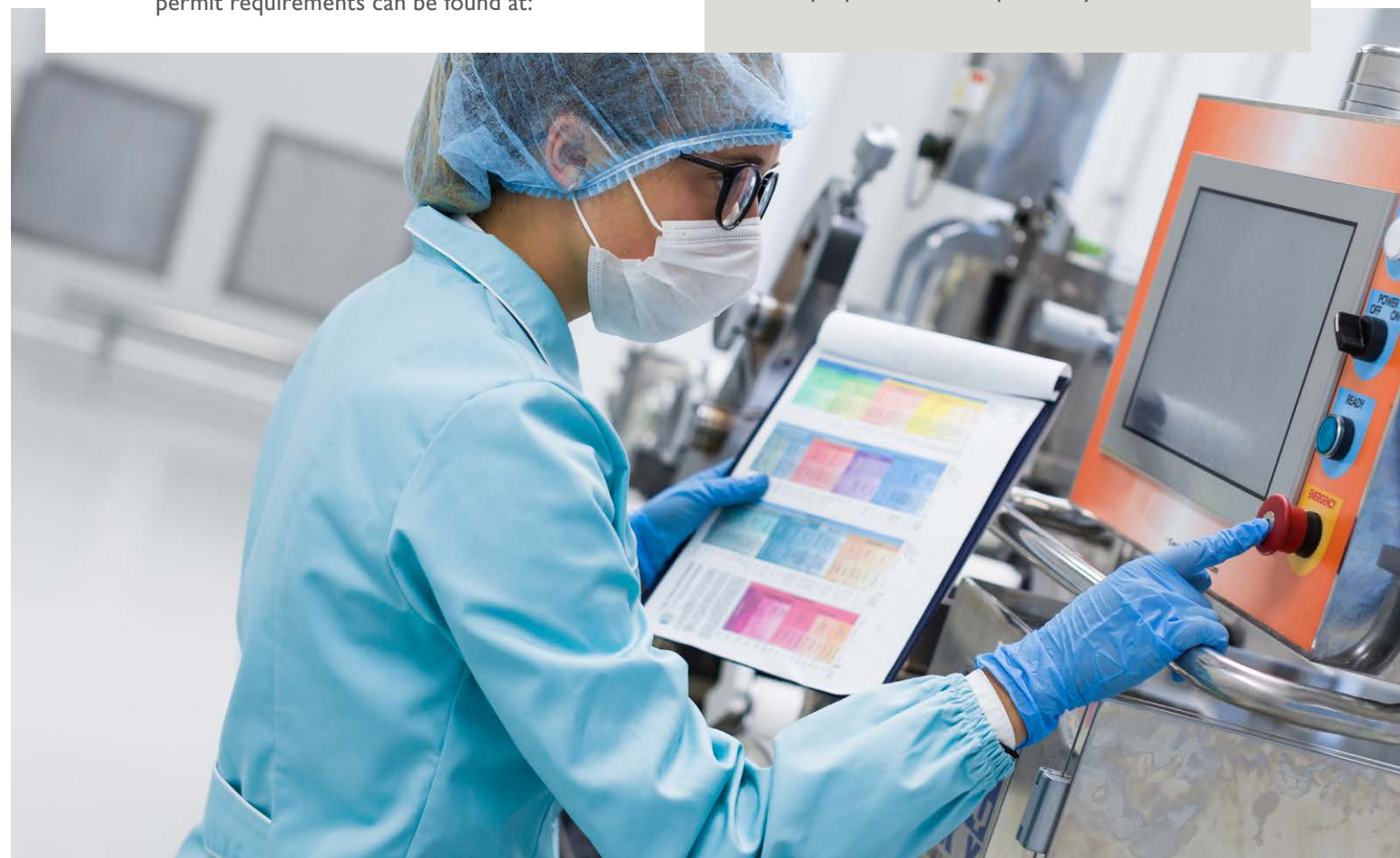
<https://epermits.aphis.usda.gov/manual/index.cfm?CFID=903624&CFTOKEN=7bfe17e4eeb5ebb0-79565006-965D-3099-D445EE12D022FA2A&ACTION=pubHome>

A link to the requirements for imports can be found at: https://www.aphis.usda.gov/aphis/ourfocus/import_export

SUMMARY

Being FDA compliant is key to success in the U.S. market and is core to running your business professionally. It requires initial and ongoing work and investment. A few critical compliance points for importing food into the U.S. include:

- Developing a robust Food Safety Plan
- Ensuring that labels are compliant
- Ensuring robust allergen controls
- Making sure that the correct party is FDA registered
- Plan several months in advance
- Consider using an FSVP import agent
- Be prepared to be inspected by the FDA



MODULE 4: EXPORTING TEXTILES AND WEARING APPAREL TO THE U.S. UNDER AGOA

OBJECTIVE

To take full advantage of AGOA, the goal of **Module 4, Exporting Textiles and Wearing Apparel to the U.S. Under AGOA**, is to highlight specific conditions for importing textiles and wearing apparel into the U.S.

LEARNING OUTCOMES

- Raised awareness about the special rules that exist for textiles and apparels, and where to find detailed information;
- Elevated the importance of having a textile certificate of origin;
- Increased knowledge of the different textile specific documents and labeling requirements for the U.S. market;
- Raised awareness of the specific focus of the CBP on enforcing the import rules in the textile and apparel sector, and;
- Increased understanding of the specific eligibility of textile and apparel related products across the USAID TradeHub priority countries including the third country fabric rule.

4.1 Specific Rules for Textiles and Apparel

Special rules for textiles and apparel are found in the HTSUS, sub-Chapter XIX of Chapter 98. These rules cover apparel articles of Chapters 61 and 62 and textile articles of Chapters 50 – 60 and 63. Countries that have established effective visa systems may export textiles and apparel to the U.S. with the benefit of AGOA treatment. To be designated as a beneficiary sub-Saharan African country eligible for textile and apparel benefits, the United States Government must be satisfied that the country has met all of the requirements of AGOA regarding implementation of procedures to protect against unlawful transshipments (including an effective visa system).

WHAT'S IN THIS MODULE?

- 4.1 Specific Rules for Textiles and Apparel
- 4.2 Textiles as Priority Issue for CBP

The countries that have been approved are listed in Chapter 98, sub-Chapter XIX, U.S. Note 1 and the lesser-developed beneficiary SSA countries (LDCs) are listed in Chapter 98, sub-Chapter XIX, U.S. Note 2(d) (see also **AGOA Export Fact Sheet 2: Checklist for Non-Textile Exports**, for details).⁶ The LDC countries are eligible for the third country fabric rule of subheading 9819.11.12 and the duty-free treatment for textile articles other than wearing apparel under subheading 9819.11.33. The third country fabric rule allows for eligible countries to still benefit from duty-free treatment even if fabric is imported from a non-eligible country. This relates to wearing apparel specifically – not necessarily other items.

Textile Certificate of Origin

The duty-free treatment applies to ten categories of merchandise and the shipment must be accompanied by a textile certificate of origin, issued by the host country's revenue authority, e.g. South African Revenue Authority. The first eight categories are for apparel articles. The ninth category is for hand loomed fabrics, articles made of hand loomed fabrics, folklore articles and ethnic fabric. The tenth category covers textile articles other than wearing apparel, but these must originate in an LDC country in SSA. Several of the apparel categories require some U.S. input. See **AGOA Export Fact Sheet 3: Rules and Eligibility Requirements for Textiles and Apparel**, for a list of eligible countries.

The most commonly used categories for the export of wearing apparel to the U.S. are Category 4-D (9819.11.09 of the HTSUS), which covers apparel assembled of SSA fabric, and Category 5-E (9819.11.12 of the HTSUS), which covers apparel regardless of the origin of the fabric (the "third country fabric rule"). The latter provision requires that the apparel be assembled

⁶ All of the USAID TradeHub priority countries under review are considered to be LDCs with the exception of South Africa.

in a lesser-developed country. Category 9-I (9819.11.27 of the HTSUS) covers hand loomed and folklore articles and ethnic fabrics but only if they meet the requirements set forth in U.S. Note 4 to Chapter 98. For hand loomed and folklore articles to be eligible they must have been certified

as eligible by the U.S. Government. Ethnic fabric must meet very specific requirements set forth in U.S. Note 4. Category 0-J (9819.11.33 of the HTSUS) covers textile articles from lesser developed beneficiary countries.



Image Source: www.istockphoto.com

**African Growth and Opportunity Act
Textile Certificate of Origin
(Revised May 2008)**

| | |
|-----------------------------|-----------------------------|
| 1. Exporter Name & Address: | 3. Importer Name & Address: |
| 2. Producer Name & Address: | 4. Preference Group: |
| 5. Description of Article: | |

| Group | <i>Each description below is only a summary of the cited provision.</i> | Legal Provision |
|------------|---|---|
| 1-A | Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. | 19 CFR 10.213(a)(1) |
| 2-B | Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes. | 19 CFR 10.213(a)(2) |
| 3-C | Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. <u>and</u> beneficiary country knit-to-shape components, from U.S. yarns and sewing thread. The U.S. fabrics may be cut in beneficiary countries, or in beneficiary countries and the United States. | 19 CFR 10.213(a)(3) or 10.213(a)(11) |
| | Apparel assembled from beneficiary country fabrics and/or knit-to-shape | 19 CFR |

Additional Document Requirements

There are additional document requirements for textiles and apparel to be eligible for AGOA. In addition to the required textile certificate of origin, the invoice must state not only the proper classification for the article as found in Chapters 50 – 60 and 63, but also state the correct item number from Chapter 98. The invoice must also be stamped by the African country with the appropriate AGOA visa stamp.

The visa stamp must include the visa number, visa grouping, quantity in whole numbers (dozens or number of items), the signature of the exporting authority and the date of issuance. The visa stamp must be a circular stamp, in blue ink, with a separate stamp for each category contained in the shipment. It must appear on the front of the original commercial invoice and must be signed by an authorized government official. The visa number on the stamp must be in the required standard nine (9) alphanumeric format. An example of a proper visa stamp is seen here. It is the responsibility of the foreign government

(generally Customs) to provide the visa stamp for use by exporters. The stamp design must be approved by the U.S. Government and a list of authorized signatories must be submitted to the U.S. Government for approval.



Labeling Requirements for Wearing Apparel

In addition to the general requirements regarding the marking of all articles imported into the U.S. with the country of origin, textile articles also require labels indicating fiber content and care instructions. The Textile Fiber Products Identification Act (“Textile Act”), Wool Products Labeling Act (“Wool Act”) and the Fur Products Labeling Act (“Fur Act”) provide that a retailer can avoid liability for mislabeling or false advertising if the retailer obtains a continuing or separate guaranty from a third-party certifying that products it transfers are not misbranded, falsely invoiced or falsely advertised. The guaranty protections are available only if the retailer receives the guaranty in “good faith” and from a “person residing in the U.S.” Thus, a retailer cannot obtain a guaranty for directly imported fur, wool or textile products.

This website provides extensive information on different requirements related to the textile labeling. <https://www.ftc.gov/tips-advice/business-center/guidance/threading-your-way-through-labeling-requirements-under-textile>.

Additional information regarding the labeling requirements for textiles can be found at the following websites:

- https://otexa.trade.gov/us_labeling.htm
- https://otexa.trade.gov/AGOA_Trade_Preference.htm

- <https://www.ftc.gov/news-events/media-resources/tools-consumers/apparel-and-labeling>
- https://www.ftc.gov/tips-advice/business-center/guidance/clothes-captioning-complying-care-labeling-rule#Frequently_Asked_Questions

4.2 Textiles as a Priority Issue for CBP

Since textiles and apparels have some of the highest duty rates of all products in the U.S., CBP prioritize enforcement of the regulations in this sector. The focus aims to protect a strong domestic textile and apparel manufacturing sector that employs 594,000 staff. In 2019, duties collected in the textiles sector made up nearly one quarter of all duties amounting to nearly \$16 billion. Higher duties make this sector susceptible to fraud such as misstating the country of origin, smuggling, undervaluation of goods, inaccurate description of the goods and misuse of trade preference programs. The Textile Production Verification Team of the CBP do conduct on-site inspections to verify production and compliance with trade preference program conditions (Textile Fact Sheet, [CBP Publication No 1058-0320, 2019](#)).

| | | |
|--|---|---|
| 100% Lyocell Made in Mexico RN 00003 | 55% polyester 45% cotton Size 10 Made in USA RN 00001 | 100% COTTON EXCLUSIVE OF DECORATION MACHINE WASH WARM TUMBLE DRY MEDIUM WARM IRON -12- MADE IN NEW ZEALAND KANGAROO IMPORTS, INC. |
|--|---|---|

Examples of Correct Labels

| Front of Label | Back of Label |
|--|--|
| ElegantLines™ Size 10 Made in USA of imported fabric | 100% silk dry clean only RN00001 |

Source: <https://www.ftc.gov/tips-advice/business-center/guidance/threading-your-way-through-labeling-requirements-under-textile>

AGOA Country Eligibility for the Eight Countries

Different countries have different eligibility in terms of AGOA, as detailed in the below table.

| Country | Date AGOA Eligible for Apparel | Category 5 LDC Special Rule for Apparel | Category 0 LDC Rule for Certain Textile Articles | Category 9 Handmade/ Hand-loomed | Category 9 Folklore Annex | Category 9 Ethnic Printed Fabric |
|----------------|---------------------------------------|--|---|---|----------------------------------|---|
| Botswana | Aug 27, 2001 | Yes | Yes | Yes | No | No |
| Eswatini | July 3, 2018 | Yes | Yes | No | No | No |
| Lesotho | Apr 23, 2001 | Yes | Yes | Yes | No | No |
| Malawi | Aug 15, 2001 | Yes | Yes | Yes | No | No |
| Mozambique | Feb 8, 2002 | Yes | Yes | Yes | Yes | No |
| Namibia | Dec 3, 2001 | Yes | Yes | Yes | No | No |
| South Africa | Mar 7, 2001 | No | No | Yes | No | Yes |
| Zambia | Dec 17, 2001 | Yes | Yes | Yes | No | No |

SUMMARY

This module highlights how strict the CBP is about enforcing regulations in the textiles and apparel sector and the additional requirements that are required to be met by export firms in terms of documentation, labeling and eligibility.



USAID
FROM THE AMERICAN PEOPLE

SOUTHERN AFRICA
TRADE
+INVESTMENT
HUB

DETERMINING ELIGIBILITY FOR THE AFRICAN GROWTH AND OPPORTUNITY ACT

There are four key requirements to qualify for preference under African Growth and Opportunity Act (AGOA), including:

1. Country must be eligible
2. Product must be eligible
3. Must be imported directly from Sub-Saharan African country
4. Must meet requirements of origin rules

REQUIREMENT #1: Country must be eligible

General Note 16 of the Harmonized Tariff Schedule for the United States (HTSUS) lists eligible countries.¹ As of September 2020, these include:

| | |
|---|--|
| Republic of Angola | Kingdom of Lesotho |
| Republic of Benin | Republic of Liberia |
| Republic of Botswana | Republic of Madagascar |
| Burkina Faso | Republic of Mali |
| Republic of Cape Verde | Republic of Malawi |
| Central African Republic | Republic of Mauritius |
| Republic of Chad | Republic of Mozambique |
| Union of the Comoros | Republic of Namibia |
| Republic of Congo | Republic of Niger |
| Republic of Cote d'Ivoire | Federal Republic of Nigeria |
| Republic of Djibouti | Republic of Rwanda |
| Kingdom of Eswatini | Democratic Republic of Sao Tome and Principe |
| Federal Democratic Republic of Ethiopia | Republic of Senegal |
| Gabonese Republic | Republic of Sierra Leone |
| The Gambia | Republic of South Africa |
| Republic of Ghana | United Republic of Tanzania |
| Republic of Guinea | Republic of Togo |
| Republic of Guinea-Bissau | Republic of Uganda |
| Republic of Kenya | Republic of Zambia |

REQUIREMENT #2: Product must be eligible

Product eligibility can be determined by studying the classification of different products in the [Harmonized Tariff Schedule of the United States \(HTSUS\)](#).

AGOA eligibility for non textile articles is indicated by a “D” under the “Special” column of Column I. This is located in the HTSUS and classified in Chapters 1 – 97.

Please note, textiles have special rules listed in Chapter 98, sub-Chapter XIX “Textile and apparel goods eligible for special tariff benefits under the African Growth and Opportunity Act” which require specific study. Reference AGOA Export Fact Sheet 3: Rules and Eligibility Requirements for Textiles and Apparel, for further details.

REQUIREMENT #3: Product must be imported directly

Products must be shipped directly from the beneficiary Sub-Saharan African country of origin to the United States. The goods cannot enter the commerce of an intermediary country.

REQUIREMENT #4: Product must meet requirements of origin rules

The cost or value of materials produced in one or more beneficiary countries plus the direct costs of processing cannot be less than 35 percent of the appraised value at entry into the United States. Up to 15 percent of the cost or value of materials may be contributed by the U.S.

¹ 2020 Harmonized Tariff Schedule for the United States: <https://hts.usitc.gov/current>



FEED THE FUTURE
The U.S. Government's Global Hunger & Food Security Initiative



USAID
FROM THE AMERICAN PEOPLE

SOUTHERN AFRICA
TRADE
+INVESTMENT
HUB

CHECKLIST FOR NON TEXTILE EXPORTS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

The African Growth and Opportunity Act (AGOA) has been at the center of U.S. economic policy and commercial engagement with Africa since 2000. AGOA provides eligible Sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products, in addition to the more than 5,000 products that are eligible for duty-free access under the Generalized System of Preferences Program.¹

Following is a list of requirements that must be met for AGOA eligibility.

- Country must be eligible (reference [General Note 16 of the Harmonized Tariff Schedule of the United States \(HTSUS\)](#)).
- Product must be eligible as indicated by a “D” in the special column of the tariff table. Further, the invoice must indicate “D” before the applicable tariff classification code.
- Product must be imported directly from a Sub-Saharan African country.
- Requirements for the rules of origin must be met. Additionally, the importer must be able to submit proof of origin within 30 days of request of U.S. Customs and Border Protection.
- Product must be properly marked with its country of origin.
- Shipment(s) must be in compliance with the requirements of other U.S. Government agencies enforced by U.S. Customs and Border Protection, including:
 - **U.S. Food and Drug Administration (FDA):** The FDA regulates the importation of food, drugs, medical devices, animal feed and cosmetics.
 - **U.S. Department of Agriculture (USDA):** The USDA Animal and Plant Health Inspection Service (APHIS) regulates compliance with phytosanitary regulations for plants and animals. The USDA Food Safety and Inspection Service (FSIS) regulates the safety of imported meat, poultry and egg products.
 - **Environmental Protection Agency (EPA):** The EPA regulates the importation of pesticides, ozone-depleting substances, chemicals, vehicles, engines and fuels and waste products.

Any goods that fall under the jurisdiction of the FDA, USDA and/or EPA may either be prohibited or restricted (require an import permit). Please be sure to check relevant Agency requirements prior to export.

¹ Office of the United States Trade Representative:
<https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa>



FEED THE FUTURE
The U.S. Government's Global Hunger & Food Security Initiative



USAID
FROM THE AMERICAN PEOPLE

SOUTHERN AFRICA
TRADE
+INVESTMENT
HUB

EXPORTING TEXTILES AND APPAREL TO THE U.S. UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT: RULES AND ELIGIBILITY REQUIREMENTS

The export of textiles and wearing apparel from a Sub-Saharan African country to the United States of America come with a unique set of rules and eligibility requirements as compared to other products. There are four key requirements for textiles and apparel products to qualify for preference under the African Growth and Opportunity Act (AGOA). They are:

1. Country must be eligible
2. Product must be eligible
3. Must be imported directly
4. Must meet requirements of origin rules

REQUIREMENT #1: Country must be eligible

Sub-Saharan Africa (SSAs) countries that are eligible for preference under AGOA are listed in the Harmonized Tariff Schedule (HTSUS), under Note 1 to Chapter 98, sub-Chapter XIX:

| | | |
|---------------|------------|--------------|
| Benin | Guinea | Rwanda |
| Botswana | Kenya | Senegal |
| Burkina Faso | Lesotho | Sierra Leone |
| Cape Verde | Malawi | South Africa |
| Chad | Mali | Tanzania |
| Cote d'Ivoire | Mauritius | Uganda |
| Eswatini | Mozambique | Liberia |
| Ethiopia | Namibia | Madagascar |
| Ghana | Nigeria | Zambia |

Countries eligible for preference as a Lesser Developed Countries (LDCs) are listed in U.S. Note 4 to Chapter 98, sub-Chapter XIX. LDC status is relevant to eligibility for trade preferences on some products, such as eligibility for the third country fabric rule. These include:

| | |
|--------------------------|-----------------------|
| Benin | Lesotho |
| Botswana | Liberia |
| Burkina Faso | Madagascar |
| Cape Verde | Malawi |
| Central African Republic | Mali |
| Chad | Mauritius |
| Republic of Congo | Mozambique |
| Cote d'Ivoire | Namibia |
| Djibouti | Niger |
| Eritrea | Nigeria |
| Eswatini | Sao Tome and Principe |
| Ethiopia | Senegal |
| The Gambia | Sierra Leone |
| Ghana | Tanzania |
| Guinea | Uganda |
| Guinea-Bissau | Zambia |
| Kenya | |

REQUIREMENT #2: Product must be eligible

Below is a list of frequently referenced categories used to determine eligibility for textiles and wearing apparel as described in the Harmonized Tariff Schedule, Chapter 98, sub-Chapter XIX:

| STAT. SUFFIX | HEADING/ SUBHEADING | ARTICLE DESCRIPTION |
|--------------|---------------------|---|
| 4D | 9819.11.09 | Apparel assembled from fabrics or yarn originating in the U.S. or a SSA beneficiary country. |
| 5E | 9819.11.12 | Apparel assembled in one or more LDCs, regardless of country of origin of fabric or yarn (third country fabric rule). IMPORTANT: the third country fabric rule only applies to LDCs. |
| 9 | 9819.11.27 | Eligible hand-loomed, handmade, folklore articles and ethnic printed fabric. ¹ |
| 0 | 9819.11.33 | Textile or textile articles originating entirely in one or more LDC. ² |

The below table summarizes the eligibility of different USAID TradeHub priority countries for different preferences.

| Country | Date AGOA Eligible for Apparel | Category 5 LDC Special Rule for Apparel | Category 0 LDC Rule for Certain Textile Articles | Category 9 Handmade/ Hand-loomed | Category 9 Folklore Annex | Category 9 Ethnic Printed Fabric |
|--------------|--------------------------------------|--|---|--|---------------------------------|--|
| Botswana | Aug 27, 2001 | Yes | Yes | Yes | No | No |
| Eswatini | July 3, 2018 | Yes | Yes | No | No | No |
| Lesotho | Apr 23, 2001 | Yes | Yes | Yes | No | No |
| Malawi | Aug 15, 2001 | Yes | Yes | Yes | No | No |
| Mozambique | Feb 8, 2002 | Yes | Yes | Yes | Yes | No |
| Namibia | Dec 3, 2001 | Yes | Yes | Yes | No | No |
| South Africa | Mar 7, 2001 | No | No | Yes | No | Yes |
| Zambia | Dec 17, 2001 | Yes | Yes | Yes | No | No |

REQUIREMENT #3: Products must be shipped directly from the beneficiary Sub-Saharan African country to the U.S. The goods **cannot** enter the commerce of an intermediary country.

REQUIREMENT #4: Product must meet requirements of origin rules

For textiles and wearing apparel origin rules are in [Chapter 98, sub-Chapter XIX](#).

CHECKLIST FOR THE EXPORT OF TEXTILES AND WEARING APPAREL

Before you export any textiles or wearing apparel to the United States, be sure to refer to the below checklist of requirements:

- The country must be eligible (General Note 16 of the HTSUS and U.S. Note 1, Chapter 98, sub-Chapter XIX)
- The product must be eligible and in compliance with the textile rules (Chapter 98, sub-Chapter XIX of the HTSUS)
- The product must be imported directly from an SSA country
- The requirements of the rules of origin must be met ³
- The shipment must be accompanied by an AGOA Certificate of Origin
- The invoice must be stamped with an appropriate visa stamp
- The product must be properly marked with its country of origin
- Textiles must be [properly labeled](#) in compliance with the requirements of the Federal Trade Commission (FTC)

¹ Handloomed, handmade, folklore must be certified by USG (U.S. Note 4(a)). Ethnic printed fabric defined in U.S. Note 4(b).

² Category 0 requires LDC status for the country.

³ Eligibility of textile and wearing apparel articles must be determined by reference to the rules of origin found in Chapter 98, sub-Chapter XIX.



USAID
FROM THE AMERICAN PEOPLE

SOUTHERN AFRICA
TRADE
+INVESTMENT
HUB

REQUIRED DOCUMENTS FOR SHIPMENTS TO THE UNITED STATES OF AMERICA

Merchandise entering the United States of America must follow a two-step process:

STEP ONE: File the necessary documents to determine whether merchandise may be released from U.S. Customs and Border Protection (CBP) custody.

STEP TWO: File the documents that contain information for duty assessment and statistical purposes.

All shipments to the U.S. must be accompanied by specific documents to meet the U.S. Customs and Border Protection requirements for the two-part process. The documents must be sent within 15 calendar days of the shipment's arrival at a [U.S. port of entry](#). Entry documents must be filed at a location specified by the Port Director. Failure to provide the needed documents can lead to delays and fines.

REQUIRED DOCUMENTS CHECKLIST

- Any export form or license that is required by the country of export.
- Entry Summary ([CBP Form 7501](#)).
- Evidence of Bond ([CBP Form 301](#)). **NOTE:** The entry must be accompanied by evidence that a bond has been posted with CBP to cover any potential duties, taxes, and charges that may accrue.
- Entry Manifest ([CBP Form 7533](#)) or Application and Special Permit for Immediate Delivery ([CBP Form 3461](#)) or other form of merchandise release required by the Port Director.
- Proof of Country of origin for the purposes of:
 1. Country of origin marking OR
 2. Eligibility for a preference program
- Evidence of right to make entry. When the goods are consigned "to order," the bill of lading or an air waybill may serve as evidence of the right to make entry.
- The packing list showing quantity, Harmonized Tariff System (HTS) code number, item description, unit cost and total cost.

- Other documents necessary to determine admissibility such as specific permits or licenses needed for certain products.

WHERE CAN I FIND REQUIRED DOCUMENTS?

All required documentation can be found online on the U.S. Customs and Border Protection website.

For relevant import forms, visit the [Automated Broker Interface \(ABI\)](#) program, which is part of the Automated Commercial System (ACS), at www.cbp.gov/document/publications/importing-united-states.

All other forms are available for download at: <https://www.cbp.gov/newsroom/publications/forms>

INVOICING

The commercial invoice must be in English and must include specific information, including:

- Port of entry to which the merchandise is destined
- Time and place of sale and names of buyer and seller
- If the goods are consigned, the time and origin of shipment, and names of shipper and receiver
- Detailed description of the merchandise
- Quantities of the goods
- Purchase price of each item in the currency of the sale
- Value in the currency in which the transactions are usually made for consignments
- Identify the kind of currency
- All charges including freight, insurance, commissions, and cost of packing
- All rebates, drawbacks, and bounties allowed on exportation of the goods
- Country of origin of the goods
- All other goods or services involved in the production of the merchandise.



FEED THE FUTURE
The U.S. Government's Global Hunger & Food Security Initiative