

U.S. Customs Service

Treasury Decision

19 CFR Part 141

(T.D. 02-07)

RIN 1515-AD03

ANDEAN TRADE PREFERENCE ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Temporary rule.

SUMMARY: This is a 90-day temporary rule. Duty-free treatment for eligible articles from beneficiary countries under the Andean Trade Preference Act (ATPA) expired on December 4, 2001. This document amends the Customs Regulations on a temporary basis to provide that effective February 15, 2002, importers of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, may exercise the option to defer the payment of estimated Customs duties and fees after entry of those articles until May 16, 2002. The Administration anticipates that the duty-free treatment accorded to merchandise under the provisions of the ATPA will be restored and made retroactive to the date of the initial termination of such duty-free treatment (December 4, 2001), and that there will be no extension of this extraordinary action.

After consultation with the State Department, the Department of Commerce, the United States Trade Representative, the Office of National Drug Control Policy, and others, it has been determined that there is a national security interest to be furthered by an interim deferral of collection of estimated duties on products from the Andean nations. Action in this matter is also intended to relieve the importing public from having to deposit estimated duties and fees on eligible merchandise and then having to apply for a refund of the duties in the event duty-free treatment is retroactively re-authorized for such merchandise under the ATPA.

EFFECTIVE DATE: This temporary rule is effective on February 15, 2002 and expires on May 16, 2002. This temporary rule applies to imported merchandise that would have been subject to duty-free treatment had the ATPA not expired, that is entered or withdrawn from warehouse for consumption in the customs territory of the United States on or after February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, 202-927-3271.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title II of Public Law 102-182 (105 Stat. 1233), enacted on December 4, 1991, and entitled the Andean Trade Preference Act (ATPA), authorized 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 ATPA is codified at 19 U.S.C. 3201-3206.

Sections 10.202-10.208 of the Customs Regulations (19 CFR 10.202-10.208) set forth the legal requirements and procedures that apply for purposes of obtaining duty-free or reduced duty treatment for articles from a beneficiary country. These articles are identified for purposes of receiving duty-free or reduced duty treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column in the HTSUS. The beneficiary countries covered by the ATPA are Bolivia, Colombia, Ecuador and Peru (General Note 11(a), HTSUS).

It is stated in 19 U.S.C. 3206(b) that no duty-free treatment extended to beneficiary countries under the ATPA will remain in effect 10 years after December 4, 1991, which, as noted above, is the date of enactment of the ATPA.

Nevertheless, the Administration anticipates that the duty-free treatment accorded to merchandise eligible for such treatment under the provisions of the ATPA will be restored and made retroactive to the date of initial termination (December 4, 2001).

After consultation with the State Department, the Department of Commerce, the United States Trade Representative, the Office of National Drug Control Policy, and others, it has been determined that there is a national security interest to be furthered by an interim deferral of collection of estimated duties on merchandise from the Andean nations previously eligible for such treatment. The ATPA serves to help encourage and expand legitimate economic activities in countries combatting illegal narcotic production and trafficking and related criminal and terrorist activities.

The ATPA explicitly references that satisfying the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) of the Foreign Assistance Act of 1961 [deemed to be a reference to section 490 of the Foreign Assistance Act, codified at 22 U.S.C. 2291j] is an important factor in determining a country's eligibility to be designated as a beneficiary under the ATPA. The Andean nations that have been designated as beneficiaries under the ATPA were last determined on March 1, 2001, to satisfy these criteria. (Section 591(5) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002 (Public Law 107-115, 115 Stat. 2118, January 10, 2002), makes section 490 of the Foreign Assistance Act inoperative in

FY 2002 and provides for modified procedures which contain many of the same elements as section 490.) Accordingly, an interim deferral of estimated duties and fees in anticipation of Congressional re-enactment of the ATPA within the next 90 days is appropriate to further the national security interest in combatting narcotic production and trafficking and related criminal and terrorist activities.

To this end, Customs is amending § 141.102 of the Customs Regulations (19 CFR 141.102) to provide that as of February 15, 2002, an importer of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, may exercise the option to defer the payment of estimated Customs duties and fees on the entry of those articles until May 16, 2002.

Action in this matter is intended to relieve the importing public from having to deposit estimated duties and fees on eligible merchandise and then having to apply for a refund of the duties in the event duty-free treatment is retroactively re-authorized for such merchandise under the ATPA in the next 90 days.

If an importer chooses to use the option of filing estimated duties and fees more than 10 days after the date of entry of the merchandise, Customs will require paper filings of the entry and entry summary.

ADMINISTRATIVE PROCEDURE ACT,
REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

After consultation with the Department of State, the Department of Commerce, the United States Trade Representative, the Office of National Drug Control Policy, and others, it has been determined that there is a national security interest to be furthered by an interim deferral of collection of estimated duties on merchandise from the Andean nations previously eligible for such treatment. Accordingly, because the national security interest at issue involves a foreign affairs function of the United States, notice and public procedure are not required pursuant to 5 U.S.C. 553(a)(1). This action will also provide the importing public an option to avoid having to deposit estimated duties and fees on eligible merchandise and then having to apply for a refund of the duties if, as expected, duty-free treatment is retroactively re-authorized for such merchandise under the ATPA in the next 90 days. Accordingly, notice and public procedure are not required pursuant to 5 U.S.C. 553(b)(B). For these same reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(a)(1) and (d)(1).

Because no notice of proposed rulemaking is required, this temporary rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor is this temporary rule a "significant regulatory action" for purposes of E.O. 12866.

LIST OF SUBJECTS IN 19 CFR PART 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Part 141, Customs Regulations (19 CFR part 141), is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 and the specific authority citation for subpart G continue to read, and a new specific authority citation for § 141.102(e) is added in appropriate numerical order to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

*	*	*	*	*	*	*
Subpart G also issued under 19 U.S.C. 1505;						
*	*	*	*	*	*	*
Section 141.102(e) also issued under 19 U.S.C. 3;						
*	*	*	*	*	*	*

2. Section 141.102 is amended by adding a new paragraph (e) to read as follows:

§ 141.102 When deposit of estimated duties, estimated taxes, or both not required.

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(e) *Merchandise otherwise duty-free under Andean Trade Preference Act (ATPA).* For merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States on or after February 15, 2002, an importer of eligible articles that, but for the expiration of the Andean Trade Preference Act (ATPA), would have been entitled to duty-free treatment under the ATPA, may, at the importer's option, defer the payment of estimated Customs duties and fees on the entry of those articles until May 16, 2002. Merchandise eligible for duty-free treatment under the ATPA is identified in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the relevant "Special" rate of duty column in the HTSUS. The procedure for obtaining duty-free treatment for merchandise otherwise eligible for such treatment under the ATPA is contained in § 10.207 of this chapter. If the option is taken to deposit the estimated duties and fees more than 10 days from the date of entry, the entry and entry summary will not be accepted by Customs electronically.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 13, 2002.

TIMOTHY E. SKUD,

Acting Deputy Assistant Secretary of the Treasury.

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