

CIT Rejects Claim for AGOA Benefits Citing Deficiencies in Documentation

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The U.S. Court of International Trade Aug. 6 denied a claim under the African Growth and Opportunity Act (AGOA) by an importer of unisex medical uniforms, finding that the importer failed to provide a traceable production time line (Polly U.S.A. Inc. v. United States, Ct. Int.'l Trade, No. 06-00312 (Slip Op. 09-80), 8/06/09).

Plaintiffs Polly USA Inc., Mansheen Industries Ltd., and W&W Garments Ltd. ("Polly") entered unisex medical uniforms at the port of Dallas, Texas, in 2005 under Harmonized Tariff Schedule of the United States subheading 9819.11.12 providing duty-free treatment to certain apparel items imported from designated sub-Saharan countries under AGOA. Polly's country-of-origin designation represented the merchandise as having been fully manufactured in Swaziland—an AGOA beneficiary.

The Bureau of Customs and Border Protection (CBP) requested additional documentation from Polly—including cutting and sewing records, information about production processes and time lines, and worker documentation and records—to establish that the goods were fully manufactured in Swaziland. While Polly provided additional documentation, CBP denied the AGOA claim because the documentation failed to establish the required traceable production time line.

CBP imposed a duty of 16 percent ad valorem. Polly protested and CBP denied the protest, leading to the filing of this action.

Verification of Claims

Senior Judge Richard W. Goldberg rejected Polly's argument that all it was required to do to receive the AGOA preference was to file its country-of-origin declaration. "This argument lacks merit. Polly's argument relies on a misunderstanding of the AGOA preference and the applicable regulations," the court wrote.

The court noted that regulations governing verification of claims for AGOA benefits are 19 C.F.R. § 10.217 (2004) and 19 C.F.R. § 10.178a (2004). Under Section 10.217, claims for preferential treatment are subject to "whatever verification the port director deems necessary."

Section 10.178a imposes a duty upon importers to "establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records."

"In light of these regulations, Polly's country of origin declaration alone did not establish its entitlement to preferential treatment, and Customs had the authority to request documentation establishing a traceable production timeline demonstrating that the entry was fully manufactured in Swaziland," the court said.

The court also rejected Polly's argument that CBP erred in finding that its entry was not fully manufactured in Swaziland. The court noted that the port director required Polly to submit various records to establish that the unisex medical uniforms were fully manufactured in Swaziland. "While Polly did submit documentation, Customs found many inconsistencies and concluded that Polly had failed to establish a traceable production timeline," the court said.

The court rejected Polly's claim that CBP was imposing an unrealistic high standard of recordkeeping in view of the economic situation in Swaziland.

Polly was represented by the law firm of Knar K. Mouhibian.

Among others, Tony West, assistant attorney general, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, represented the government.