

West Bank And Gaza Duty-Free Treatment Of Products

DUTY-FREE TREATMENT OF PRODUCTS OF THE WEST BANK AND GAZA

On October 2, 1996, the President signed legislation giving him authority to proclaim duty-free treatment of products of the West Bank and Gaza Strip. On November 13, 1996, the President signed the proclamation modifying the Harmonized Tariff Schedule in order to implement duty-free treatment.

Support for the economic development of the WB and Gaza has been an important element in U.S. Mideast policy. At the February 1995 Blair House meetings between the U.S., Egypt, Israel, Jordan and the Palestinian Authority (PA), President Clinton announced that duty free treatment for all products of the WB and Gaza was a key element of the Administration's efforts to stimulate the Palestinian economy and an essential ingredient in the United States' support for the Middle East Peace Process.

In April 1995, the President extended the terms of the General System of Preferences to products of the West Bank and Gaza Strip. This action provided the Palestinians with duty free to the U.S. market for a limited range of products. At the same time, the President began consultations with Congress to get the authority necessary to proclaim duty-free for a full range of products.

This approach was fully embraced by then-USTR Mickey Kantor in his communications both within the Administration and with Israeli and Palestinian leaders. Ambassador Kantor received a letter from the PA assuring the U.S. that the PA would provide, to the extent of its authority, duty-free entry for all U.S. products into the WB and Gaza. An exchange of letters between Ambassador Kantor and Israel's then-Minister of Industry and Trade Micha Harish affirmed Israeli support for the U.S. decision to provide duty-free treatment to WB and Gaza products.

It is difficult to determine the accurate value of WB and Gaza trade with the United States, since products of the WB and Gaza were included in statistics of trade with Israel until 1995. Trade with the U.S. is currently very small. In practical terms, trade is unlikely to increase in the nearterm, since the WB and Gaza do not have direct export outlets to the rest of the world. Marketing institutions and services are virtually non-existent and a range of technical problems must be addressed to ensure that many products of the WB and Gaza achieve international standards.

At the February 1995 Blair House meeting, President Clinton also supported the concept of duty-free treatment for products of special manufacturing zones on the borders of Israel and its neighbors, particularly the adjoining Red Sea areas (Taba, Eilat, Aqaba). The President's action reaffirmed the importance of fostering economic development and investment in the region. This legislation and subsequent proclamation authorizes the President to designate "qualifying industrial zones" and permit duty-free entry into the U.S. for products of such zones. Qualifying zones must encompass territory of Israel and Jordan or Israel and Egypt. The proclamation authorizes the USTR to designate applicable zones.

TO PROVIDE DUTY - FREE TREATMENT TO PRODUCTS
OF THE WEST BANK AND THE GAZA STRIP
AND QUALIFYING INDUSTRIAL ZONES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

1. Section 9 (a) of the United States- Israel Free Trade Area Implementation Act of 1985, as amended (the "Act") (19 U.S.C. 2122 note), authorizes the President to proclaim elimination or modification of any existing duty under certain conditions as the President determines in necessary to exempt any article of the West Bank or Gaza Strip or a qualifying industrial zone from duty.

2. Section 9(c) of the Act authorizes the President to proclaim that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the U.S.-Israel Free Trade Agreement (the "Agreement") even if shipped to the United States for the West Bank, the Gaza Strip or a qualifying industrial zone.

3. Section 9(d) of the Act authorizes the President to proclaim that the cost or value of materials produced in the West Bank, the Gaza Strip or a qualifying zone may be included in the cost or value of materials produced in Israel under section 1 (c) (i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank, the Gaza Strip or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1 (c)(ii) of Annex 3 of the Agreement.

4. Section 9(e) of the Act authorizes the President to specify areas that constitute qualifying industrial zones for purposes of the Act.

5. Pursuant to section 9(a) of the Act, I have determined that the Harmonized Tariff Schedule of the United States ("HTS") should be modified to provide duty-free entry to qualifying articles that are the product of the West Bank or Gaza Strip or a qualifying industrial zone and are entered in accordance with the provisions of section 9 of the Act.

6. I have decided that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the Agreement even if shipped to the United States from the West Bank, the Gaza Strip or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.

7. I have decided that the cost or value of materials produced in the West Bank, the Gaza Strip or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1 (c) (i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank, the Gaza Strip or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1 (c) (ii) of Annex 3 of the Agreement.

8. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) authorized by the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 301 of title 3, the United States Code, section 9 of the Act (19 U.S.C. 2122 note), and section 604 of the Trade Act of 1974 (19 U.S.C. 2483), do proclaim that:

(1) In order to provide the tariff treatment being accorded under the Act, the HTS is modified as set forth in the Annex to this proclamation.

(2) I delegate to the United States Trade Representative the powers granted to me in section 9 (e) of the Act to specify through notice in the Federal Register areas constituting qualifying industrial zones.

(3) The modifications to the HTS made by the Annex shall be effective with respect to goods entered, or withdrawn from

ANNEX

MODIFICATIONS TO GENERAL NOTES 3 AND 8 TO

THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on and after the third day after the date of publication of this proclamation in the Federal Register:

1. General note 3(a)(i) is modified by deleting "subparagraph (iv)" and by inserting in lieu thereof "subparagraphs (iv) and (v)".

2. The following-new provisions are inserted in numerical sequence in general note 3(a) to the Harmonized Tariff Schedule of the United States:

"(v) Products of the West Bank, the Gaza Strip or a qualifying industrial zone.

(A) Subject to the provisions of f this paragraph, articles which are imported directly from the West Bank, the Gaza Strip, a qualifying industrial zone as defined in subdivision (G) of this subparagraph or Israel and are--

(1) wholly the growth, product or manufacture of the West Bank, the Gaza Strip or a qualifying industrial zone; or

(2) new or different articles of commerce that have been grown, produced or manufactured in the West Bank, Gaza Strip or a qualifying industrial zone, and the sum of--

(I) the cost or value of the materials produced in the West Bank, Gaza Strip, a qualifying industrial zone or Israel, plus

(II) the direct costs of processing operations (not including simple combining or packaging operations, and not including mere dilution with water or with another substance that does not materially alter the characteristics of such articles) performed in the West Bank, the Gaza Strip, a qualifying industrial zone or Israel,

Is not less than 35 percent of appraised value of such articles; Shall be eligible for duty-free entry into the customs territory of the United States. For purposes of subdivision (A)(2), materials which are used in the production of articles in the West Bank, the Gaza Strip or a qualifying industrial zone, and which are the product of the United States, may be counted in an amount up to 15 percent of the appraised value of such articles.

(B) Articles are "imported directly" for the purposes of this paragraph if--

(1) they are shipped directly from the West Bank, the Gaza Strip, a qualifying industrial zone or Israel into the United States without passing through the territory of any intermediate country; or

(2) they are shipped through the territory of an intermediate country, and the articles in the shipment do not enter into the commerce of any intermediate country, and the invoices, bills of lading and other shipping documents specify the United States as the final destination; or

(3) they are shipped through an intermediate country and the invoices and other documents do not specify the United States as the final destination; or

(I) remain under the control of the customs authority in an intermediate country;

(II) do not enter into the commerce of an intermediate country except for the purpose of a sale other than at retail, but only if the articles are imported as a result of the original commercial transactions between the importer and the producer or the producer's sales agent; and

(III) have not been subjected to operations other than loading, unloading or other activities necessary to preserve the articles in good condition.

(C) The term "new or different articles of commerce" means that articles must have been substantially transformed in the West Bank, the Gaza Strip or a qualifying industrial zone into articles with a new name, character or use.

(D) (1) For the purposes of subdivision (A)(2)(I), the cost or value of materials produced in the West Bank, the Gaza Strip or a qualifying industrial zone includes--

(I) the manufacturer's actual cost for the materials;

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

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

(IV) taxes or duties imposed on the materials by the West Bank, the Gaza Strip or a qualifying industrial zone, in such cases as such taxes are not remitted on exportation.

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

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

(II) an amount for profit; and

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

(3) If the information necessary to compute the cost or value of a material is not available, the Customs Service may ascertain or estimate the value thereof using all reasonable methods.

(E) (1) For the purposes of this paragraph, the "direct costs of processing operations performed in the West Bank, the Gaza Strip or a qualifying industrial zone" with respect to an article are those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture or assembly of that article. Such costs include, but are not limited to, the following to the extent that they are includible in the appraised value of articles imported into the United States:

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

(II) Dies, molds, tooling and depreciation on machinery and equipment which are allocable to such articles;

(III) Research, development, design, engineering and blueprint costs insofar as they are allocable to such articles.

(2) Those items that are not included as direct costs of processing operations with respect to an article are those which are not directly attributable to the article or are not costs of manufacturing the article. Such items include, but are not limited to--

(I) profit; and

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

(F) Whenever articles are entered with a claim for the duty exemption provided in this paragraph;--

(1) the importer shall be deemed to certify that such articles meet all of the conditions for duty exemption.

(2) when requested by the Customs Service, the importer, a manufacturer or exporter submits a declaration setting forth all pertinent information with respect to such articles, including the following:

(I) A description of such articles, quantities, numbers and marks of packages, invoice numbers and bills of lading;

(II) A description of the operations performed in the production of such articles in the West Bank, the Gaza Strip or a qualifying industrial zone or Israel and an identification of the direct costs of processing operations;

(III) A description of the materials used in the production of such articles which are wholly the growth, product or manufacture of the West Bank, the Gaza Strip or a qualifying industrial zone, Israel or the United States, and a statement as to the cost or value of such materials;

(IV) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in such articles which are claimed to have been sufficiently processed in the West Bank,

the Gaza Strip or a qualifying industrial zone or Israel so as to be materials produced in the West Bank, the Gaza Strip or a qualifying industrial zone or Israel; and

(V) A description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in the West Bank, the Gaza Strip or a qualifying industrial zone.

(G) For the purposes of this paragraph, a "qualifying industrial zone" means any area that--

(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; and

(2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and

(3) has been designated by the United States Trade Representative in a notice published in the Federal Register as a qualifying industrial zone.

3. General note 8 is modified as follows:

(a) by inserting in subdivision (b)(ii) of such note the expression "(or directly from the West Bank, the Gaza Strip or a qualifying industrial zone as defined in general note 3(a)(v)(G) to the tariff schedule)" immediately after "Israel";

(b) by inserting in subdivision (b) (iii) (A) of such note the expression " and including the cost or value of materials produced in the West Bank, the Gaza Strip or a qualifying industrial zone pursuant to general note 3(a) (v) to the tariff schedule,"immediately after "Israel"; and

(c) by inserting in subdivision (b) (iii) (B) of such note the expression "and including the direct costs of processing operations performed in the West Bank, the Gaza Strip or a qualifying industrial zone pursuant to general note 3(a)(v) to the tariff schedule," immediately after "Israel,".

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