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May 4, 2009

The Honorable Gary Locke
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Secretary:

We are writing about the Office of Textiles and Apparel's (OTEXA's) implementation of the U.S.-Dominican Republic Earned Import Allowance (EIA) Program. OTEXA is seeking comments regarding its interpretation of a key term in the legislation – namely, the term “wholly formed,” as it relates to U.S. fabric that Dominican Republic producers must purchase to get “credits” to apply toward duty-free shipments. We understand that OTEXA is currently interpreting this term to require that all dyeing, printing, and finishing occur in the United States. We note that such an interpretation was not contemplated in the drafting of the legislation, is not required under the express terms of the legislation, and is not consistent with the approach under other similar programs. Further, the interpretation would seriously undercut the effectiveness of the EIA Program.

In developing the EIA Program, we worked closely with representatives of the U.S. textile industry and the Dominican Republic apparel industry toward the common goal of creating incentives for the purchase of U.S. textiles, thereby supporting businesses and workers in the United States, while also providing valuable benefits to apparel producers and workers in the Dominican Republic. During this process, interested parties had substantial opportunities to provide input regarding the architecture of the program and the precise terms used to implement it. At no time, did any of the representatives propose a definition of “wholly formed” that would require dyeing, printing, and finishing in the United States.

Nor was such a requirement ultimately included in the express terms of the EIA legislation. Instead, the legislation leaves the term undefined, to be interpreted consistently with the interpretation of the same/similar terms under other similar programs. The U.S.-Nicaragua “one-for-one” earned import allowance program is one such example. That program – which also grew out of the CAFTA-DR free trade agreement negotiations and on which the EIA Program was loosely modeled – uses the term “U.S.-formed fabric” to refer to U.S. fabric that

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Nicaraguan pants producers must purchase in order to acquire credits for duty-free shipment. The “one-for-one” program does not require all dyeing, printing, or finishing of U.S.-origin fabric to occur in the United States. The same approach is warranted – and was contemplated – for the EIA context as well.

Similarly, three U.S. preference programs – the Caribbean Basin Trade Partnership Act (CBTPA), the African Growth and Opportunity Act (AGOA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA) – use the identical term “wholly formed” in reference to U.S.-origin fabric. In each of those instances, the implementing regulations define “wholly formed” to mean “all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process. . . .” Dyeing and finishing are not encompassed within the definition of “wholly formed.” Rather, where the preference legislation requires dyeing, printing, or finishing in the United States, it expressly lists those processes as a distinct condition for receiving duty-free treatment. By contrast, the EIA legislation contains no such express condition that dyeing, printing, or finishing occur in the United States.

OTEXA’s interpretation of “wholly formed” would not only break from the past precedent, but it would also undercut the effectiveness of the EIA Program. The EIA Program strikes a careful balance by creating important new incentives for Dominican Republic producers to purchase U.S. fabric while preserving the production processes and flexibilities currently used by Dominican Republic producers. The imposition of restrictive new conditions that are not contemplated in the legislation will seriously undermine this balance and the ability of Dominican Republic producers to use the program, to the detriment of stakeholders both in the United States and the Dominican Republic.

We hope that OTEXA will change its interpretation of “wholly formed” in the EIA legislation to exclude any requirement that dyeing, printing, or finishing occur in the United States, consistent with the text of the legislation and legislative intent. We are submitting a copy of this letter directly to OTEXA, but urge your attention to this important matter as well.

Sincerely,



The Honorable Charles B. Rangel
Chairman
Committee on Ways and Means



The Honorable Dave Camp
Ranking Member
Committee on Ways and Means