



May 4, 2009

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Submitted via E-mail to OTEXA_DR2for1@mail.doc.gov.

This is in response to the Office of Textiles and Apparel (“OTEXA”) **request for public comment on the wholly formed requirement of qualifying woven fabric under the Dominican Republic Earned Import Allowance Program (“DR 2:1”)** published in the April 3, 2009, *Federal Register* at 74 FR 15255. We write on behalf of the National Textile Association (“NTA”) and the American Manufacturing Trade Action Coalition (“AMTAC”), trade associations of domestic U.S. fabric making and finishing companies. Our members produce in the U.S. knitted, woven, and nonwoven fabrics as well as dye, print and finish fabrics in the U. S. and supply fiber, yarn, and other goods and services to the domestic U.S. textile industry.

In the April 3rd *Federal Register* notice OTEXA states:

OTEXA currently interprets “wholly formed” within the definition of “qualifying woven fabric” to require that all production processes and finishing operations, starting with weaving and ending with a fabric ready for cutting or assembly without further processing, take place in the United States. OTEXA believes this interpretation to be consistent with similar definitions and interpretations of the term “wholly formed.”

NTA and AMTAC agree with OTEXA and also interpret “wholly formed” within the definition of “qualifying woven fabric” to require that all production processes and finishing operations, starting with weaving and ending with a fabric ready for cutting or assembly without further processing, take place in the United States.

NTA and AMTAC agree with OTEXA that this interpretation is consistent with similar definitions and interpretations of the term “wholly formed.”

BACKGROUND

Section 2 of the Andean Trade Preference Extension Act of 2008¹ (“ATPEA”) amends Title IV of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act². Specifically, Title IV of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act is amended by adding Section 404 creating a benefit for eligible apparel articles wholly assembled in the Dominican Republic that meet the requirements for a “2 for 1” earned import allowance program. “Qualifying woven fabric” is defined in Section 2 of the ATPEA and in OTEXA’s interim procedures as “woven fabric of cotton wholly formed in the United States from yarns wholly formed in the United States” and intended for production of apparel in the Dominican Republic.

ANALYSIS

While neither the ATPEA nor the interim procedures define the term “wholly formed” as it is used in the definition of “qualifying woven fabric,” we believe that the context and history of the DR 2:1 clearly support OTEXA’s current interpretation.

1) The legislative text supports the OTEXA interpretation.

The definition of qualifying fabric in the DR 2:1 legislation states

(4) the term ‘qualifying fabric’ means woven fabric of cotton wholly formed in the United States from yarns wholly formed in the United States and **certified by the producer or entity controlling production as being suitable for use in the manufacture of apparel items such as trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts or pants**, all the foregoing of cotton, except that—[emphasis added]

We contend that greige fabric is not certifiable as suitable for use in the manufacture of cotton woven trousers and other similar apparel items. The dyeing and finishing stage imparts distinct characteristics that only then make the fabric suitable for and identifiable with such a specific apparel application. In the greige form, woven cotton fabric can be used for numerous applications beyond assembly of trousers and other similar items.

2) U.S. preference programs require U.S. dyeing and finishing.

DR 2:1 is an apparel trade preference program (“TPP”) analogous to the program created by the Andean Trade Preference and Drug Eradication Act of 2002 (“ATPDEA”). America’s TPPs are carefully designed to promote two ends: bolstering the industries that cut and sew apparel in our preference partner countries and also providing a market for the products of companies that form and/or finish fibers, yarns, and fabrics in the United States.

¹ Public Law 110-436, 122 Stat. 4976

² Public Law 109-53; 119 Stat. 495

The ATPEA created the DR 2:1 as an extension of ATPDEA, and, under the rules of ATPDEA, whenever fabric must be “wholly formed” in the United States, the dyeing, printing and finishing are also required to take place in the United States so that the fabric is ready for cutting or final assembly without further processing. Congress could have prescribed a different rule for the DR 2:1 from that of the ATPDEA, but, by not so prescribing, we must take the silence to mean that the ATPDEA requirement for fabric ready for cutting or assembly without further processing applies to the DR 2:1.

As a result, allowing dyeing and finishing to take place outside of the United States under DR 2:1 is inconsistent with U.S. preference program policy and would set a dangerous precedent.

3) The D.R.-CAFTA text prohibits third party dyeing and finishing.

DR 2:1, while not part of the negotiated Dominican Republic-Central America-United States Free Trade Agreement (“DR-CAFTA”), is an amendment to the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act and should be evaluated in the context and history of that agreement. In an October 24, 2006, letter to the government of the Dominican Republic, U.S. Special Trade Negotiator Scott D. Quesenberry memorialized the agreement reached between the United States and the Dominican Republic regarding changes to the DR-CAFTA rules of origin regarding certain pocketing fabrics and certain tariff lines in Chapter 62 of the Harmonized System. In that letter Mr. Quesenberry also memorializes that

The Governments of the Dominican Republic and the United States shall consult to determine additional measures to maintain the competitiveness of trouser and suit manufacturers in the Dominican Republic, while at the same time preserving and promoting the use of U.S. fabrics for such garments.

The DR 2:1 constitutes those “additional measures...” We conclude three things from this:

(a) DR 2:1 was conceived in the context of DR-CAFTA in specific bilateral negotiations with the Dominican Republic that resulted in changes to the negotiated text of DR-CAFTA. DR-CAFTA, as with our other FTAs, has a “direct shipment rule”—

Article 4.12: Transit and Transshipment. Each Party shall provide that a good shall not be considered to be an originating good if the good: (a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or (b) does not remain under the control of customs authorities in the territory of a non-Party.

As the DR 2:1 operates and was conceived in the context of DR-CAFTA, the DR-CAFTA direct shipment rule precludes dying, printing and finishing of wholly formed

U.S. fabric outside of the DR-CAFTA region. It would be inconsistent to allow a weaker rule for DR 2:1 qualifying fabrics than that of the DR-CAFTA agreement itself.

(b) The understanding between the U.S. and the Dominican Republic that the DR 2:1 is intended “to maintain the competitiveness of trouser and suit manufacturers in the Dominican Republic, while at the same time *preserving* and *promoting* the use of U.S. fabrics for such garments” clearly shows that DR 2:1, while operating in the context of an FTA, was intended as an apparel trade preference program similar to ATPDEA (see #1 above) and subject to the same requirement that the fabric be exported from the U.S. ready for cutting or assembly without further processing. Therefore dyeing, printing and finishing in a third country outside of the DR-CAFTA region or in a DR-CAFTA partner is precluded as incompatible with the TPP rule.

(c) Allowing dyeing and finishing to take place outside of the United States does not “preserve and promote the use of U.S. fabrics” as dyeing and finishing represents an important element of the U.S. fabric industry. Often, over 50 percent of the value of a fabric is attributable to the dyeing, finishing and printing processes. Allowing offshore dyeing and finishing undercuts critical benefits to the U.S. textile sector, which is not the aim of the program.

It is important to note that the D.R. 2:1 program was designed to create new business -- not to undermine any U.S. production. This necessitated the requirement that the program reward purchases of U.S. yarn and fabric, inclusive of dying and finishing. U.S. fabric must be ready for assembly and made from U.S. components – that way every step in the supply chain is included, and processes currently done in the United States are not simply outsourced to foreign textile manufacturers.

4) U.S. dyeing and finishing is necessary for effective Customs enforcement.

Keeping the foreign operations to only cutting and assembly in the Dominican Republic is also important from an enforcement perspective. A simple point to point transaction where fabric is exported to one facility abroad for cutting and assembly and then sent back to the United States as apparel makes the program much easier to monitor and enforce. If U.S. greige fabrics are exported for dying and finishing in one or potentially multiple countries and then sent to the Dominican Republic for cutting and final assembly, numerous countries and companies become involved and the opportunities for fraud increase.

We believe that Customs simply does not have the resources to properly track shipments of unfinished fabric to various third countries to determine whether they are qualifying products under the terms of the D.R. 2:1 program. Allowing third party dying and finishing would create a massive, unenforceable loophole in this program.

For the above reasons NTA and AMTAC support OTEXA’s current interpretation of “wholly formed.”

Sincerely,

Handwritten signature of Auggie Tantillo in black ink.

Auggie Tantillo
Executive Director
American Manufacturing Trade
Action Coalition (AMTAC)

Handwritten signature of David Trumbull in black ink.

David Trumbull
Vice President, International Trade
National Textile Association (NTA)