

SANDLER, TRAVIS & ROSENBERG, P. A.

ATTORNEYS AT LAW
505 SANSOME STREET
SUITE 1475
SAN FRANCISCO, CA 94111

T. RANDOLPH FERGUSON
MELISSA MILLER PROCTOR*
MATTHEW K. NAKACHI
ELISE A. SHIBLES

STEPHEN L. BUCKLIN
OF COUNSEL

(415) 986-1088
FAX (415) 986-2271
INFO@STRTRADE.COM
WWW.STRTRADE.COM

SANDLER & TRAVIS
TRADE ADVISORY SERVICES
MIAMI • WASHINGTON, D.C.
DETROIT • MEXICO CITY
OTTAWA • SÃO PAULO
CONSULTING SERVICES

* ADMITTED TO PRACTICE IN
ARIZONA, FLORIDA AND ILLINOIS ONLY

March 20, 2009

Sent via E-mail

Hard Copy to Follow via Federal Express

U.S. Department of Commerce
International Trade Administration
Office of Textiles and Apparel
Room H3100
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

Attn: Ms. Janet Heinzen, Acting Deputy Assistant Secretary

Re: **Definition of "Wholly Formed" under DR 2 for 1 Earned Import Allowance Program**

Dear Ms. Heinzen:

We are writing to request clarification on the interpretation of the term "wholly formed" as it pertains to U.S. fabric exported under the Dominican Republic two-for-one earned import allowance program (DR 2:1). We understand that Department of Commerce believes that the term "wholly formed" in reference to qualifying exported fabric under the DR 2:1 program must include all finishing operations. We understand that Commerce's reasoning for this interpretation is that the term "wholly formed" is defined in the CAFTA-DR to mean that all production processes and finishing operations...took place in the territory of a Party or in the United States. And since the legislation for the DR 2:1 is an amendment to the CAFTA-DR, so the DR 2:1 must be interpreted in conformity with the rest of the agreement.

We disagree with this interpretation. We respectfully submit the following information outlining the requirements for wholly formed under the DR 2:1 program.

THE CAFTA-DR DEFINITION OF WHOLLY FORMED FABRIC DOES NOT APPLY TO DR 2:1

The CAFTA-DR only defines "wholly formed fabric" in footnote 7 to Article 3.26, which is the provision for U.S. fabric, cut and assembled in the CAFTA-DR countries and returned to the U.S. paying partial duty under a non-originating 809 type of program.

Specifically, Article 3.26 provides:

“Article. 3.26: Most-Favored-Nation Rates of Duty on Certain Goods

For a textile or apparel good provided for in chapters 61 through 63 of the Harmonized System that is not an originating good, the United States shall apply its MFN rate of duty only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States, and any other materials of U.S. origin used in the production of such a good, provided that the good is sewn or otherwise assembled in the territory of another Party or Parties with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more Parties, or from components knit-to-shape in the United States, or both.⁷

⁷ For purposes of this paragraph, “wholly formed,” when used in reference to fabrics , means that all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling, or other process and ending with a fabric ready for cutting or assembly without further processing, took place in the United States. The term “wholly formed,” when used in reference to thread, means that all the production processes, starting with the extrusion of filaments, strips, film, or sheet, and including slitting oa film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.”

The footnote definition specifically begins with “for purposes of **THIS PARAGRAPH...**” There is no definition of wholly formed fabric elsewhere in the agreement. If that definition were intended to apply to the entire textile chapter, it would have been put in the definitions section, not as a footnote applicable only to a single paragraph.

The implementation of Article 3.26 of the CAFTA-DR is consistent with the definition of wholly formed fabric only applying to that specific provision. This definition has not been included in the Customs Regulations for the CAFTA-DR. Likewise, it is not included anywhere in General Note 29 to implement the CAFTA-DR in the HTSUS. The definition is only stated in HTSUS Chapter 98, Subchapter XXII, Note 22(a), where the requirements for the 809 program are set out in the tariff. This definition, therefore, applies only to that program.

Furthermore, the DR 2:1 program is not an amendment to the CAFTA-DR agreement. It is a unilateral U.S. preference program, such as CBTPA, passed as an amendment to the CAFTA-DR implementing legislation as a legislative vehicle, not as an amendment to the agreement. The section of the implementing legislation that contains this amendment also contains other miscellaneous provisions, including amendments to CBTPA. There is no indication that any terminology in the DR 2:1 program should be read in conjunction with any part of the CAFTA-DR agreement. The CAFTA-DR amendment process was not followed for the purpose of entry into force of this legislation.

Therefore, the CAFTA-DR definition of wholly formed fabric applicable to Article 3.26 does not apply to eligible fabrics under the DR 2:1 earned import allowance.

THERE IS NO DIRECT SHIPMENT REQUIREMENT FOR EXPORTS OF QUALIFYING FABRIC

Additional evidence of the intent that U.S. greige fabric is eligible for this program is the fact that there is no direct shipment requirement for qualifying fabric exported from the U.S. for the purpose of production in the Dominican Republic. Section 404 of the implementing legislation clearly states that qualifying imported apparel articles must be imported directly [Sec. 404(a)(1)]. No such “direct” requirement pertains to exports of qualifying fabric. Section 404(b)2(C) reads, “Any textile mill or other entity located in the United States that exports qualifying fabric to an eligible country...”

Similarly, the interim procedures for the DR 2:1 program published by Department of Commerce specifically identify and define the direct shipment requirement for imports of qualifying apparel from the Dominican Republic to the United States but reflect no such direct shipment requirement on exports of qualifying fabric.

As there is no requirement for qualifying fabric to be shipped directly to the Dominican Republic, dyeing and finishing of US greige fabric is not precluded by the terms of the DR 2:1 legislation.

THE EARNED TPL FOR NICARAGUA DOES NOT REQUIRE U.S. DYEING OR FINISHING

The commitment by the Government of Nicaragua to the U.S. for a one-for-one matching on Nicaragua trousers of U.S. formed fabric of U.S. formed yarn is a similar earned import allowance concept. Nicaragua must earn its full TPL under the CAFTA-DR by shipping an equivalent amount of trousers of U.S. formed fabric of U.S. formed yarn as of foreign fabric. That commitment is reiterated in writing by the Vice Minister of Trade, Julio Teran in a letter to Special Textile Negotiator Scott Quesenberry on March 24, 2006, a copy of which is attached.

The provision to implement that commitment is set forth in HTSUS Chapter 99, Subchapter XV, U.S. Note 15(d) and requires that the trousers be originating CAFTA-DR goods of Nicaragua and made from U.S. formed fabric of U.S. formed yarn.

Both the letter between the two governments and the implementing provision in the HTSUS contain no requirement for fabric dyeing or finishing to take place in the U.S. As a matter of practice, we understand that most goods qualifying under this provision contain US fabric of US yarn, which fabric is dyed or finished in Nicaragua.

It would be inconsistent and discriminatory to interpret the DR earned import program at a higher standard for inputs than the Nicaragua earned import program for similar goods.

THE INTERPRETATION OF WHOLLY FORMED FABRIC HAS NOT HISTORICALLY INCLUDED DYEING OR FINISHING

The Caribbean Basin Trade Partnership Act (CBTPA) contains a requirement for “wholly formed fabric in the U.S. from yarns wholly formed in the U.S.” The definition “wholly formed” with reference to fabric means, “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, took place in a single country.” (19 CFR 10.222)

Because the CBTPA definition of wholly formed fabric did not include dyeing and finishing, the CBTPA was amended by Congress, and separate language requiring dyeing, printing or finishing was added to the legislation. It was not added as a change to the definition of wholly formed fabric. It was added as a requirement for U.S. dyeing, printing or finishing in **ADDITION** to fabric being wholly formed.

Separate from the definition section of the CBTPA regulations, this requirement reads in part, “In the case of an article...that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States;...” [19 CFR 10.223(b)(i)]

The implementation of the CBTPA definition of wholly formed fabric and the separate requirement for dyeing, printing or finishing of fabric is similarly bifurcated. The requirement in specific provisions for U.S. wholly formed fabric of U.S. wholly formed yarn is set out in the tariff within the language of each HTSUS Subheading 9820.11 to which it applies. The requirement for U.S. dyeing, printing or finishing in the U.S. is enumerated in U.S. Note 2(a) to that Subchapter.

The Andean Trade Preference and Drug Eradication Act (ATPDEA) mirrors this interpretation, separating the definition of wholly formed fabric from the requirement for dyeing, printing and finishing. Apparel articles are covered by the Act if they are sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries, or the United States, or both, exclusively from...Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries. Apparel articles qualify under that sub-clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. [19 USC 3203(b)(3)(i)(I)]

This is implemented in HTSUS tariff item 9820.11.01 which provides for, “Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more such countries...provided that, if such apparel articles are assembled from knitted or crocheted fabrics or from woven fabrics, all dyeing, printing and finishing of the fabrics is carried out in the United States.”

The DR 2:1 is a unilateral preference program similar to CBTPA and ATPDEA. It would be inconsistent and yield unforeseeable and unintended results if the language of the legislation is interpreted differently. It is clear from these two unilateral programs that if the intent is that fabric dyeing and finishing be required in addition to being wholly formed, that such a provision must be added to the legislation to make it so.

ORIGINATING APPAREL UNDER FREE TRADE AGREEMENTS NEED NOT BE DYED OR FINISHED IN THE PARTIES

To require dyeing, printing or finishing of US wholly formed fabric under the DR 2:1 earned import program would be to set a higher standard than even originating goods under the CAFTA-DR or other free trade agreement.

US Customs and Border Protection (CBP) has long held in its interpretation of rules of origin under free trade agreements that intermediate operations may occur outside the territory of the parties to the agreement as long as such operations are not required by the tariff shift or value requirement in the rules of origin.

For example, sheets and pillowcases of Bahrain fabric of Bahrain yarn, embroidered and cut to width in Pakistan, then returned to Bahrain for cutting to length and hemming or sewing, packing and shipping directly to the US qualify under the yarn forward rule of origin for sheets and pillowcases under the US-Bahrain Free Trade Agreement. The goods were transformed in Bahrain so as to meet the tariff shift required in the Agreement. See CBP Ruling N006776 attached.

Additionally, garments made under the following scenario were held to qualify for the U.S.-Israel Free Trade Agreement:

- Fabric formed in Israel;
- Fabric dyed in a country other than Israel, the U.S. or a QIZ;
- Cut in Israel;
- Assembled in a country other than Israel, the U.S. or a QIZ;
- Finishing and tagging in Israel;
- Shipped directly to the U.S. from Israel.
-

The intermediate processing, including fabric dyeing did not preclude preferential treatment under that Agreement because the preferential rule of origin had been met. The goods were found to be products of Israel, directly shipped from Israel to the U.S. and qualified as long as they met the value requirement. See CBP Ruling HQ 560882 attached.

These are just two examples of originating textile and apparel articles under bilateral free trade agreements that were found to meet the rules of origin of such agreements regardless of intermediate processing in a third country not party to the agreement. The language of the statute does not require the dyeing and finishing of the fabric in the United States and therefore there is no justification for holding DR 2:1 qualifying fabric to a nonexistent higher standard than originating goods under free trade agreements, including CAFTA-DR.

CONCLUSION

For these reasons, we interpret the DR 2:1 program to permit U.S. greige fabric to be dyed and finished outside of the United States for the purpose of qualifying fabric exports under DR 2:1.

Please feel free to contact me at 415-986-1088 if you have any questions. If after you consider these issues, Commerce continues to have a different interpretation, we would like the opportunity to meet with you to discuss this issue in person.

Very cordially yours,
SANDLER, TRAVIS & ROSENBERG, P.A.

A handwritten signature in black ink, appearing to read "Elise Shibles", written in a cursive style.

Elise Shibles

Enclosures

EAS/kf

S:\MAINFILES\Adazona\DR fabric finishing letter to Heizen.032009.DOC

March 24, 2006

Mr. Scott Quesenberry
Special Textile Negotiator
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Mr. Quesenberry:

I have the honor to confirm the following understandings reached between our Governments regarding Article 3.20 (Refund of Customs Duties) and Article 3.25 (Rules of Origin and Related Matters) of the Dominican Republic – Central America – United States Free Trade Agreement signed on August 5, 2004 (the "Agreement"):

- (1) After the Agreement enters into force, the United States will propose a modification to the Agreement's rules of origin, pursuant to Article 3.25 of the Agreement. This modification will provide that if a good of the U.S. Harmonized Tariff Schedule (HTS) Chapters 61 and 62 contains a pocket or pockets, the pocket bag fabric must be formed and finished in the territory of one or more of the Parties from yarn wholly formed in one or more of the Parties] in order for an apparel good to qualify as an originating good under the Agreement ("pocket fabric rule of origin modification").
- (2) Nicaragua is prepared to engage in Article 3.25 consultations immediately after the Agreement enters into force, and will agree to the pocket fabric rule of origin modification in those consultations without condition or delay.
- (3) The application by Nicaragua of the pocket fabric rule of origin modification will provide a benefit to the United States that satisfies the requirements of Article 3.20.3 of the Agreement.
- (4) In light of Nicaragua's unconditional commitment to agree to the pocket fabric rule of origin modification, the United States will provide duty refunds as provided for under Article 3.20.1 of the Agreement with respect to imports of textile or apparel goods of Nicaragua that were imported into the United States between January 1, 2004 and the date of entry into force of the Agreement for Nicaragua and that satisfy the other requirements of that article.
- (5) After the Agreement enters into force, Nicaragua will propose a modification, pursuant to Article 22.2 of the Agreement, to the tariff preference level (TPL) set out in Annex 3.28 of the Agreement. This modification will provide that men's wool sport coats in textile category 433 shall qualify for preferential tariff

treatment under the TPL, provided that the component that determines the tariff classification of the good is of carded wool classified in tariff item 5111.11.7030, 5111.11.7060, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, or 5111.90.9000, and provided that the good satisfies all other applicable requirements of Annex 3.28 of the Agreement. The total quantity of such men's wool sport coats that may qualify for preferential tariff treatment under the TPL shall be subject to an annual sublimit of 1.5 million square meter equivalents (SME) within the overall TPL limit.

- (6) After the Agreement enters into force, Nicaragua will propose a further modification, pursuant to Article 22.2 of the Agreement, to the tariff preference level (TPL) set out in Annex 3.28 of the Agreement. This modification will provide that the overall limit in the sixth through the ninth years of the Agreement set forth in subparagraphs 4(b) to 4(e) of Annex 3.28 shall be increased to 100 million SME in each of those years. Nicaragua shall further propose to amend Annex 3.28 of the Agreement to provide that, upon the written request of Nicaragua, the United States shall require an importer claiming preferential treatment under the TPL to submit to the United States a certificate of eligibility, properly completed and signed by an authorized official of Nicaragua and presented at the time of importation into the United States.
- (7) Further, Nicaragua reiterates its commitment of July 18, 2005 regarding its administration of the TPL with respect to cotton and man-made woven trousers in textile categories 347/348 and 647/648.
 - (a) This commitment shall apply to cotton woven trousers in textile categories 347/348 and to man-made fiber woven trousers in textile categories 647/648 that are classified in Chapter 62 of the Harmonized System and exported to the United States from Nicaragua and entered under the TPL.
 - (b) Specifically, for each square meter equivalent (SME) of exports entered under the TPL and identified in subparagraph (a), Nicaragua will export to the United States an equal amount of cotton and man-made fiber woven trousers made of U.S.-formed fabric of U.S.-formed yarn (one-for-one purchasing). For purposes of complying with the one-for-one purchasing rule, exports of U.S.-formed fabric of U.S.-formed yarn need not be of the same tariff items as exports entered under the TPL, so long as both are contained within the tariff classification identified in subparagraph (a). This one-for-one purchasing rule shall apply to all imports of cotton and man-made fiber woven trousers entered under the TPL, except that the one-for-one purchasing rule shall only apply to cotton woven trousers as follows:

- (i) in the first year after the date of entry into force of the Agreement, to the first 20 million SME of cotton woven trousers imported into the United States under the TPL;
- (ii) in the second year of the Agreement, to the first 30 million SME of such imports;
- (iii) in the third year of the Agreement, to the first 40 million SME of such imports; and
- (iv) in the fourth and subsequent years of the Agreement, to the first 50 million SME of such imports.

Any exports of cotton woven trousers made under the TPL in excess of the specified quantities in clauses (i) to (iv) shall not be subject to the one-for-one purchasing rule.

- (c) Beginning on January 1, 2007, and annually thereafter, Nicaragua shall provide the United States with shipment-specific data regarding all exports to the United States of both woven trousers under the TPL and woven trousers made from U.S.-formed fabric of U.S.-formed yarn required under the one-for-one purchasing rule, including the specific sources of the U.S.-formed fabrics used, via a certificate of eligibility, during the prior year. The United States will verify these data with the U.S. fabric producers and will determine whether the amount of the cotton and man-made fiber woven trouser exports made under the TPL exceeded the amount of exports of cotton and man-made fiber woven trousers made from U.S.-formed fabric of U.S.-formed yarn required under the one-for-one purchasing rule. Any such excess in a given year that is not rectified by April 1 of the following year shall be charged to Nicaragua's TPL for that year.
 - (d) The United States may require an importer to declare that a particular entry of originating cotton or man-made fiber woven trousers is made with U.S.-formed fabric of U.S.-formed yarn in order for that entry to be counted as fulfilling the one-for-one purchasing rule in subparagraph (b).
- (8) The United States is prepared to engage in consultations regarding the proposed modifications described in paragraphs (5) and (6) immediately after the Agreement enters into force, and will agree to the proposed modifications in those consultations without condition or delay.
 - (9) Subject to the acceptance of the proposed modifications described in paragraphs (1), (5), and (6) by the other Parties to the Agreement, and after the proposed modifications are approved in accordance with the applicable legal procedures of

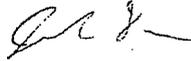
each of the Parties, Nicaragua and the United States shall implement the proposed modifications on a date the Parties shall determine.

- (10) Nicaragua and the United States acknowledge that, if another Party proposes a modification of the rules of origin pursuant to Article 3.25 of the Agreement, such modification shall, if accepted by the other Parties, approved in accordance with the applicable legal procedures of each of the Parties, and implemented in accordance with Article 3.25.3, supersede the prior rule of origin as applied to goods of all of the Parties.

Pursuant to Articles 3.20.2 and 3.20.3 of the Agreement, this letter provides notice that Nicaragua will not comply with Article 3.20.1 of the Agreement and that Nicaragua will instead provide a benefit, in the form of the pocket fabric rule of origin modification that our two Governments consider to satisfy the requirements of Article 3.20.3 of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,



Julio Teran
Vice Minister of Trade

cc:

Ms. Doris Osterlof, Vice Minister of Foreign Trade of Costa Rica
Mr. Marcello Puello, Vice Minister of Trade of the Dominican Republic
Mr. Eduardo Ayala, Vice Minister of Economy of El Salvador
Mr. Enrique Lacs, Vice Minister of Economy of Guatemala
Mr. Jorge Rosa, Vice Minister of Foreign Trade of Honduras

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

27 March 2006

Mr. Julio Teran
Vice Minister of Trade
Republic of Nicaragua
Managua, Nicaragua

Dear Vice Minister Teran:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understandings reached between our Governments regarding Article 3.20 (Refund of Customs Duties) and Article 3.25 (Rules of Origin and Related Matters) of the Dominican Republic – Central America – United States Free Trade Agreement signed on August 5, 2004 (the "Agreement"):

- (1) After the Agreement enters into force, the United States will propose a modification to the Agreement's rules of origin, pursuant to Article 3.25 of the Agreement. This modification will provide that if a good of the U.S. Harmonized Tariff Schedule (HTS) Chapters 61 and 62 contains a pocket or pockets, the pocket bag fabric must be formed and finished in the territory of one or more of the Parties from yarn wholly formed in one or more of the Parties] in order for an apparel good to qualify as an originating good under the Agreement ("pocket fabric rule of origin modification").
- (2) Nicaragua is prepared to engage in Article 3.25 consultations immediately after the Agreement enters into force, and will agree to the pocket fabric rule of origin modification in those consultations without condition or delay.
- (3) The application by Nicaragua of the pocket fabric rule of origin modification will provide a benefit to the United States that satisfies the requirements of Article 3.20.3 of the Agreement.
- (4) In light of Nicaragua's unconditional commitment to agree to the pocket fabric rule of origin modification, the United States will provide duty refunds as provided for under Article 3.20.1 of the Agreement with respect to imports of textile or apparel goods of Nicaragua that were imported into the United States between January 1, 2004 and the date of entry into force of the Agreement for Nicaragua and that satisfy the other requirements of that article.

510

- (5) After the Agreement enters into force, Nicaragua will propose a modification, pursuant to Article 22.2 of the Agreement, to the tariff preference level (TPL) set out in Annex 3.28 of the Agreement. This modification will provide that men's wool sport coats in textile category 433 shall qualify for preferential tariff treatment under the TPL, provided that the component that determines the tariff classification of the good is of carded wool classified in tariff item 5111.11.7030, 5111.11.7060, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, or 5111.90.9000, and provided that the good satisfies all other applicable requirements of Annex 3.28 of the Agreement. The total quantity of such men's wool sport coats that may qualify for preferential tariff treatment under the TPL shall be subject to an annual sublimit of 1.5 million square meter equivalents (SME) within the overall TPL limit.
- (6) After the Agreement enters into force, Nicaragua will propose a further modification, pursuant to Article 22.2 of the Agreement, to the tariff preference level (TPL) set out in Annex 3.28 of the Agreement. This modification will provide that the overall limit in the sixth through the ninth years of the Agreement set forth in subparagraphs 4(b) to 4(e) of Annex 3.28 shall be increased to 100 million SME in each of those years. Nicaragua shall further propose to amend Annex 3.28 of the Agreement to provide that, upon the written request of Nicaragua, the United States shall require an importer claiming preferential treatment under the TPL to submit to the United States a certificate of eligibility, properly completed and signed by an authorized official of Nicaragua and presented at the time of importation into the United States.
- (7) Further, Nicaragua reiterates its commitment of July 18, 2005 regarding its administration of the TPL with respect to cotton and man-made woven trousers in textile categories 347/348 and 647/648.
- (a) This commitment shall apply to cotton woven trousers in textile categories 347/348 and to man-made fiber woven trousers in textile categories 647/648 that are classified in Chapter 62 of the Harmonized System and exported to the United States from Nicaragua and entered under the TPL.
- (b) Specifically, for each square meter equivalent (SME) of exports entered under the TPL and identified in subparagraph (a), Nicaragua will export to the United States an equal amount of cotton and man-made fiber woven trousers made of U.S.-formed fabric of U.S.-formed yarn (one-for-one purchasing). For purposes of complying with the one-for-one purchasing rule, exports of U.S.-formed fabric of U.S.-formed yarn need not be of the same tariff items as exports entered under the TPL, so long as both are contained within the tariff classification identified in subparagraph

(a). This one-for-one purchasing rule shall apply to all imports of cotton and man-made fiber woven trousers entered under the TPL, except that the one-for-one purchasing rule shall only apply to cotton woven trousers as follows:

- (i) in the first year after the date of entry into force of the Agreement, to the first 20 million SME of cotton woven trousers imported into the United States under the TPL;
- (ii) in the second year of the Agreement, to the first 30 million SME of such imports;
- (iii) in the third year of the Agreement, to the first 40 million SME of such imports; and
- (iv) in the fourth and subsequent years of the Agreement, to the first 50 million SME of such imports.

Any exports of cotton woven trousers made under the TPL in excess of the specified quantities in clauses (i) to (iv) shall not be subject to the one-for-one purchasing rule.

- (c) Beginning on January 1, 2007, and annually thereafter, Nicaragua shall provide the United States with shipment-specific data regarding all exports to the United States of both woven trousers under the TPL and woven trousers made from U.S.-formed fabric of U.S.-formed yarn required under the one-for-one purchasing rule, including the specific sources of the U.S.-formed fabrics used, via a certificate of eligibility, during the prior year. The United States will verify these data with the U.S. fabric producers and will determine whether the amount of the cotton and man-made fiber woven trouser exports made under the TPL exceeded the amount of exports of cotton and man-made fiber woven trousers made from U.S.-formed fabric of U.S.-formed yarn required under the one-for-one purchasing rule. Any such excess in a given year that is not rectified by April 1 of the following year shall be charged to Nicaragua's TPL for that year.
- (d) The United States may require an importer to declare that a particular entry of originating cotton or man-made fiber woven trousers is made with U.S.-formed fabric of U.S.-formed yarn in order for that entry to be counted as fulfilling the one-for-one purchasing rule in subparagraph (b).

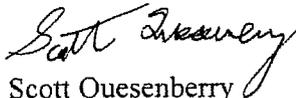
- (8) The United States is prepared to engage in consultations regarding the proposed modifications described in paragraphs (5) and (6) immediately after the Agreement enters into force, and will agree to the proposed modifications in those consultations without condition or delay.
- (9) Subject to the acceptance of the proposed modifications described in paragraphs (1), (5), and (6) by the other Parties to the Agreement, and after the proposed modifications are approved in accordance with the applicable legal procedures of each of the Parties, Nicaragua and the United States shall implement the proposed modifications on a date the Parties shall determine.
- (10) Nicaragua and the United States acknowledge that, if another Party proposes a modification of the rules of origin pursuant to Article 3.25 of the Agreement, such modification shall, if accepted by the other Parties, approved in accordance with the applicable legal procedures of each of the Parties, and implemented in accordance with Article 3.25.3, supersede the prior rule of origin as applied to goods of all of the Parties.

Pursuant to Articles 3.20.2 and 3.20.3 of the Agreement, this letter provides notice that Nicaragua will not comply with Article 3.20.1 of the Agreement and that Nicaragua will instead provide a benefit, in the form of the pocket fabric rule of origin modification that our two Governments consider to satisfy the requirements of Article 3.20.3 of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understandings referred to in your letter are shared by my Government, and that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,



Scott Quesenberry
Special Textile Negotiator

cc:

Ms. Doris Osterlof, Vice Minister of Foreign Trade of Costa Rica
Mr. Marcello Puello, Vice Minister of Trade of the Dominican Republic
Mr. Eduardo Ayala, Vice Minister of Economy of El Salvador
Mr. Enrique Lacs, Vice Minister of Economy of Guatemala
Mr. Jorge Rosa, Vice Minister of Foreign Trade of Honduras

N006776

February 28, 2007

CLA-2-63:RR:NC:TA:349

CATEGORY: Classification

TARIFF NO.: 6302.31.5010; 6302.31.5020

Ms. Margaret R. Polito Neville Peterson LLP 17 State Street, 19th Floor New York, NY 10004

RE: The tariff classification and status under the United States-Bahrain Free Trade Agreement (UBFTA), of pillowcases and sheets from Bahrain.

Dear Ms. Polito:

In your letter dated February 8, 2007 you requested a ruling on the status of sheets and pillowcases from Bahrain under the UBFTA. This request is made on behalf of WestPoint Home Inc.

You submitted samples of two pillowcases and one flat sheet. The pillowcases are made from a 100 percent cotton woven fabric that is not printed and not napped. The open end of the pillowcase referred to as Style 62252 is finished with a 4.5-inch wide strip of embroidered self-fabric. The other pillowcase, Style 61862, has a 4-inch wide banded or cuffed hem made from self-fabric. This hem features an embroidered design. The flat sheet is made from a 60 percent cotton and 40 percent man-made fiber fabric that is not printed and not napped. It is hemmed on two sides and selvage on the bottom. The top edge is finished with a 4.25-inch wide strip of embroidered self-fabric.

The manufacturing operations for the sheet and pillowcases are as follows:

Bahrain:

- cotton fibers are spun into a yarn.
- cotton and man-made fibers are spun into a yarn.
- yarns are woven into a cotton fabric and a 60/40 cotton/mmff fabric.
- fabrics are bleached and dyed.
- some rolls of fabric are shipped to Pakistan.

Pakistan:

- fabric is embroidered with Pakistani yarns.
- embroidered fabric is cut to widths of less than 30 centimeters.
- spools containing 100-yard lengths of these strips are returned to Bahrain.

Bahrain:

- cotton and cotton blend fabrics are cut to size for pillowcases and sheets.
- embroidered fabric strips are cut to length. -fabrics are sewn/hemmed to create the sheet and pillowcases.
- sheet and pillowcases are packaged and shipped directly to the U.S.

You have indicated that the Pakistani yarns used to embroider the fabric strips weighs less than 7 percent of the total weight of the sheet and pillowcases.

The applicable tariff provision for the pillowcases will be 6302.31.5010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for bed linen, table linen, toilet linen and

kitchen linen: other bed linen: of cotton: containing any embroidery, lace, braid, edging, trimming, piping or appliqué work: not napped... pillowcases, other than bolster cases. The general rate of duty will be 20.9 percent ad valorem.

The applicable tariff provision for the flat sheet will be 6302.31.5020, HTSUS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of cotton: containing any embroidery, lace, braid, edging, trimming, piping or appliqué work: not napped... sheets. The general rate of duty will be 20.9 percent ad valorem.

The pillowcases fall within textile category 360 and the flat sheet falls within textile category 361. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

General Note 30(b), HTSUS, sets forth the criteria for determining whether a good is originating under the UBFTA. General Note 30(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (e), (g) and (h) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of a UBFTA country under the terms of this note only if –

(i) the good is a good wholly the growth, product or manufacture of Bahrain or of the United States, or both;

(ii) for goods not covered by subdivision (b)(iii) below, the good is a new or different article of commerce that has been grown, produced or manufactured in the territory of Bahrain or of the United States, or both, and the sum of--

(A) the value of each material produced in the territory of Bahrain or of the United States, or both, and

(B) the direct costs of processing operations performed in the territory of Bahrain or of the United States, or both,

is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States; or

(iii) the good falls in a heading or subheading covered by a provision set forth in subdivision (h) of this note and--

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in such subdivision (h) as a result of production occurring entirely in the territory of Bahrain or of the United States, or both; or

(B) the good otherwise satisfies the requirements specified in such subdivision (h); and

is imported directly into the territory of the United States from the territory of Bahrain and meets all other applicable requirements of this note. For the purposes of this note, the term "good" means any merchandise, product, article or material.

The sheets and pillowcases at issue will be eligible for the UBFTA preferential treatment if they are transformed in Bahrain so that the non-originating material undergoes a change in tariff classification described in subdivision (h) to General Note 30, HTSUS. For heading 6302, HTSUS, subdivision (h), Chapter 63, rule 1, states that:

A change to headings 6301 through 6302 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both.

Additionally, General Note 30(e), HTSUS, sets out specific rules for textile and apparel articles. General Note 30(e)(i) states in pertinent part that:

Except as provided in subdivision (ii) below, a textile or apparel good that is not an originating good under the terms of this note, because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in subdivision (h) of this note, shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is no more than seven percent of the total weight of that component.

Based on the facts provided, the goods described above qualify for UBFTA preferential treatment, because they will meet the requirements of HTSUS General Note 30(b)(iii). The goods will therefore be entitled to a Free rate of duty under the UBFTA upon compliance with all applicable laws, regulations, and agreements.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 646-733-3043.

Sincerely,
Robert B. Swierupski
Director, National Commodity Specialist Division

HQ 560882

July 1, 1998

CLA-02 RR:CR:SM 560882 RSD
CATEGORY: CLASSIFICATION

Arthur Bodek, Esq.
Graham & James, LLP
885 Third Avenue
24th Floor
New York, New York 10022

RE: Eligibility of garments for preferential duty treatment under the U.S.-Israel Free Trade Agreement (USIFTA); General Note 8; 19 U.S.C. 3592; 19 C.F.R. 12.130; Duty-Free treatment for products of the West Bank, Gaza Strip, or a Qualifying Industrial Zone; Presidential Proclamation 6955; 61 Fed. Reg. 58761; General note 3(a)(v); Textile Rules of Origin; 19 CFR 102.21; Double substantial transformation; Imported directly

Dear Mr. Bodek:

This is in response to your letter dated March 9, 1998, requesting a ruling on behalf of BCTC Corporation (BCTC) concerning the eligibility of certain garments imported from Israel, West Bank or Gaza Strip for duty-free entry under the U.S.-Israel Free Trade Area Agreement ("Israel FTA") or under General Note 3(a)(v) of the Harmonized Tariff Schedule of the United States (HTSUS). Samples of the garments were enclosed with your letter. As you requested, the samples will be returned to you under a separate cover.

FACTS:

BCTC is planning to import various garments from Israel, the West Bank or Gaza Strip. The five sample garments are said to be representative of the types of garments that BCTC is planning to import into the United States. The first garment is a traditional short-sleeved knitted polo-type shirt. It features a two button partial placket, ribbed cuffs and collar, a patch pocket on the left chest (with no means of closure) and a hemmed bottom. The second garment is a short-sleeved knitted polo-type shirt similar to the first garment. It features a four button partial placket, pointed collar (not ribbed), a patch pocket on the left chest (secured by means of a one-button closure), a hemmed cuff and a hemmed bottom. The third garment is also a short-sleeved knitted polo-type shirt of pieced construction featuring a three button partial placket, ribbed cuffs, collar and waistband and an inserted pocket on the left chest (with no means of closure). The fourth garment is a woven long-sleeved pullover shirt with a three button partial placket, a pointed collar, an inserted pocket on the left chest (with no means of closure) and ribbed cuffs and waistband. The fifth garment is a knitted full-length pair of basic pull-on pants with an elasticized waistband and right and left inserted side pockets.

The garments will be produced through one of three possible manufacturing scenarios. Under the first manufacturing scenario, foreign origin yarn will be imported into Israel where it will be formed into either knitted or woven greige fabric. The fabric then will be shipped to a foreign country for dyeing and then returned to Israel. In Israel, the fabric will be cut into the component pieces of the garments. The Israeli-formed and cut components will then be shipped from Israel to a foreign country for complete assembly. After assembly, the garments will be returned to Israel where they will be subjected to any necessary finishing operations including tagging of each item (e.g., with a hang tag, price ticket, or other tag). The finished garments will then be shipped directly from Israel to the United States.

Under the second manufacturing scenario, foreign-origin fabric will be imported into Israel where all further operations necessary to produce the garments (i.e., cutting the fabric into component pieces, assembling the components, and performing any necessary finishing operations) will be performed. The finished garments will then be shipped directly from Israel to the United States.

In the third manufacturing scenario, foreign origin fabric will be imported into the West Bank or the Gaza Strip where all further operations necessary to produce the garments (i.e., cutting the fabric into components, assembling the components, and performing any necessary finishing operations) will be performed. The finished garments will then be shipped directly to the U.S. from the West Bank, Gaza Strip, or Israel.

ISSUES:

Whether the subject garments in scenarios 1 and 2 are eligible for preferential duty treatment under the U.S.-Israel Free Trade Agreement (USIFTA) when imported into the United States.

Whether the garments in scenario 3 are eligible for preferential duty treatment under General Note 3(a)(v), HTSUS, when imported into the United States.

LAW AND ANALYSIS:

U.S. -Israel Free Trade Agreement

Under the U.S.-Israel Free Trade Agreement (USIFTA), eligible articles the growth, product, or manufacture of Israel which are imported directly into the U.S. from Israel qualify for duty-free treatment, provided the sum of 1) the cost or value of materials produced in Israel, plus

2) the direct costs of processing operations performed in Israel is not less than 35 percent of the appraised value of the article at the time it is entered. See, General Note 8, Harmonized Tariff Schedule of the United States (HTSUS).

CLASSIFICATION

Based on the samples and the descriptive information you have provided concerning the garments under consideration here, it appears that garment style number 1, a knitted cotton polo shirt would be classified under subheading 6105.10.00.10, HTSUS. Garment style number 2, a short-sleeve knitted polo shirt, appears to be classified under subheading 6105.20.20.10, HTSUS. Garment style number 3, a short-sleeved knitted polo type shirt construction, appears to be classified under subheading 6110.30.30.50, HTSUS. Garment style number 4, a woven long-sleeve pullover shirt, appears to be classified under subheading 6205.30.20.70, HTSUS. The final article, garment style number 5, the pull on pants, appears to be classified under subheading 6104.63.20.11, HTSUS. Articles provided for in all five of these provisions are eligible for duty-free treatment under the USIFTA, provided that they are a "product of" Israel, meet the value-content requirement, and are "imported directly" to the U.S.

First Scenario--Yarn Imported into Israel

A) Country of origin ("Product of") requirement

Articles are considered "products of" Israel if they are made entirely of materials originating there or, if made from materials imported into Israel, those materials are "substantially transformed into a new and different article of commerce, having a new name, character or use, distinct from the article or material from which it was so transformed." See Annex 3 of the Agreement on the Establishment of a Free Trade Area Between the Government of the United States of America and the Government of Israel. The Agreement was approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985, Pub. L. No. 99-47, 99 Stat. 82.

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published a final rule in the Federal Register, (60 FR 46188) implementing section 334 by creating a new

section 102.21, Customs Regulations (19 CFR 102.21). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21. However, section 334(b)(5) provides that:

This section shall not affect, for purposes of the customs laws and administration of quantitative restrictions, the status of goods that, under rulings and administrative practices in effect immediately before the enactment of this Act, would have originated in, or been the growth, product, or manufacture of, a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1987. For such purposes, such rulings and administrative practices that were applied, immediately before the enactment of this Act, to determine the origin of textile and apparel products covered by such agreement shall continue to apply after the enactment of this Act, and on and after the effective date described in subsection (c), unless such rulings and practices are modified by the mutual consent of the parties to the agreement.

Israel is the only country which qualifies under the terms of section 334(b)(5). As the section 334 rules of origin for textiles and apparel products do not apply to Israel, we refer to the 19 CFR 12.130 rules of origin, which were the rules of origin applicable to textiles and textile products before the enactment of section 334. Section 334(b)(5) makes clear that if, by application of 19 CFR 12.130, Israel was determined to be or determined not to be the country of origin of a product prior to enactment of section 334, the same treatment will be accorded after enactment of section 334. This interpretation of section 334(b)(5) was confirmed in a Notice of a general statement of policy, Treasury Decision (T.D.) 96-58, appearing in the Federal Register, Vol. 61, No. 148, dated July 31, 1996.

Section 12.130(b), Customs Regulations (19 CFR 12.130(b)), states that the standard of substantial transformation governs the country of origin determination where textiles and textile products are processed in more than one country. The country of origin of textile products is deemed to be that foreign territory or country where the article last underwent a substantial transformation. Substantial transformation is said to occur when the article has been transformed into a new and different article of commerce by means of substantial manufacturing or processing.

The factors to be applied in determining whether or not a manufacturing operation is substantial are set forth in 19 CFR 12.130(d)(2). The following are considered:

- i) The physical change in the material or article;
- ii) The time involved in the manufacturing or processing;
- iii) The complexity of the manufacturing or processing;
- iv) The level or degree of skill and/or technology required in the manufacturing or processing operations;
- v) The value added to the article or material.

Section 12.130(e)(1), Customs Regulations (19 CFR 12.130(e)(1)), which sets forth various processes that, if performed in a foreign territory, country or insular possession, are usually sufficient to effect a substantial transformation, specifically includes the cutting of fabric into parts and the assembly of those parts into the completed article. See 19 CFR 12.130(e)(1)(iv).

In the first scenario, foreign yarn will be imported into Israel and formed into fabric. After the fabric is dyed in a second country, it is returned to Israel, where it is cut into the component parts of the garments and shipped to another country for the assembly. The garments are then sent back to Israel for finishing before they are shipped to the United States.

Customs has consistently determined that cutting fabric into specific or defined shapes suitable for use as components in an assembly operation of the garment pieces constitutes a substantial transformation of the fabric and that the clothing pieces became products of the country where the fabric is cut. See, Headquarters Ruling Letter (HRL) 731036, dated July 18, 1989, where the country of origin was found to be Country A where fabric was cut into twelve separate pattern pieces in Country A and then transported to

Country B for assembly into the finished polo shirt. Therefore, pursuant to Section 12.130, the last substantial transformation in scenario one occurs in the country where the fabric is cut--Israel.

With respect to whether in the first scenario, the subsequent assembly process in a second country results in a second substantial transformation, which would change the country of origin of the finished garments, T.D. 85-38 (19 Cust. Bull. 58 (1985)), the final rule document establishing 19 CFR 12.130, stated that:

The assembly of all the cut pieces of a garment usually is a substantial manufacturing process that results in an article with a different name, character, or use than the cut pieces. It should be noted that not all assembly operations of cut garment pieces will amount to a substantial transformation of those pieces. Where either less than a complete assembly of all the cut pieces of a garment is performed in one country, or the assembly is a relatively simple one, then Customs will rule on the particular factual situation as they arise, utilizing the criteria in Section 12.130(d).

Customs has also long held that the mere assembly of goods entailing simple combining operations, trimming or joining together by sewing is not enough to substantially transform the components of an article into a new and different article of commerce. HRL 950887, dated March 2, 1992, HRL 082787, dated March 9, 1989, and HRL 082747, dated February 23, 1989. However, note 19 CFR 12.130(e)(1)(v) which specifies the following processing as usually effecting a substantial transformation:

Substantial assembly by sewing and/or tailoring of all cut pieces of apparel article which have been cut from fabric in another foreign territory or country, or insular possession, into a completed garment (e.g. the complete assembly and tailoring of all cut pieces of suit type jackets, suits and shirts)

In this instance, when the Israeli cut components are assembled together in a second country, we believe that the sewing of the cut pieces appears to involve a simple assembly of garment pieces to make the 4 types of shirts and the pair of pants. The sewing of the components of the garments does not amount to the complex sewing operation required in section 12.130(e)(1)(v) because a limited number of parts are sewn together and there is no individual tailoring of the garments. Therefore, after the assembly in a second country, the shirts and pants would remain products of Israel.

B) "Imported Directly" from Israel

Annex 3, paragraph 8, of the U.S.-Israel FTA defines the words "imported directly," as follows:

- (a) Direct shipment from Israel to the U.S. without passing through the territory of any intermediate country;
- (b) If shipment is through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of any intermediate country while en route to the U.S., and the invoices, bills of lading, and other shipping documents, show the United States as the final destination;
- (c) If shipment is through an intermediate country and the invoices and other documentation do not show the U.S. as the final destination, then the articles in the shipment, upon arrival in the U.S., are imported directly only if they:
 - (i) remain under 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, provided that the articles are imported as a result of the original commercial transaction between the importer and the producer or the latter's sales agent;
 - (iii) have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the article in good condition.

We have held for purposes of the Generalized System of Preferences (GSP) that merchandise is deemed to have entered the commerce of an intermediate country if manipulated (other than loading or unloading), offered for sale (whether or not a sale actually takes place), or subjected to a title change in the country. HRL 071575, dated November 20, 1984. The definition of "imported directly" under the GSP is very similar to that under the U.S.-Israel FTA. See 19 CFR 10.175.

In HRL 557149, dated November 22, 1993, denim jeans were produced from greige fabric woven in Israel from Israeli-origin yarns. In Israel, the fabric was dyed and precisely cut to size and shape to form the components of each garment. The various components cut to size and shape in Israel, were sent to China for assembly. In China, the various garment components were joined together by means of simple machine-sewing operations such as joining and setting the leg components, setting the belt loops, sewing the crotch, etc. After the garments were assembled, they were stone-washed, pressed, inspected and packaged for shipment back to Israel. In Israel, the shipment was removed from the vessel and brought to the manufacturer's facility, where cartons were opened and sample garments inspected, pursuant to contractual arrangement and commercial practice, in accordance with Military Standard 105-D, described therein. We held that under the facts described, there was a manipulation of the merchandise, and therefore an entry into the commerce of Israel of all the goods in each shipment. Therefore, we found that the denim jeans were considered to have been "imported directly" from Israel into the U.S. In HRL 560250, dated April 10, 1997, we determined that goods were considered to have entered the commerce of Israel and be imported directly from Israel to the United States after they were returned to Israel from Egypt for a final inspection and packaging.

Accordingly, in order to be considered "imported directly" from Israel, the finished garments, upon their return from a second country, must enter into the commerce of Israel, i.e., they must be manipulated in Israel. You have advised that after assembly, the garments will be returned to Israel where they will undergo finishing operations, such as tagging. Consistent with our holding in HRL 557194, we are of the opinion that based on these facts, the goods will enter into the commerce of Israel and will be considered to be "imported directly" from Israel into the U.S., assuming they are transported from Israel to the U.S. without passing through the territory of any intermediate country.

C) Value Content Requirement

In addition to the "imported directly" and "product of" requirements, to be eligible for duty-free treatment under the USIFTA, merchandise must also satisfy the 35% value-content requirement. If an article is produced or assembled from materials which are imported into Israel, the cost or value of those materials may be counted toward the 35% value-content minimum as "materials produced in Israel" only if they are subjected to a double substantial transformation in Israel. This is consistent with Customs and the courts' interpretation of "materials produced" under the Generalized System of Preferences (GSP) (19 U.S.C. 2461-2466) and the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. §2701-2706). See *Torrington Co., v. United States*, 8 CIT 150, 596 F. Supp. 1083 (CIT 1984), *aff'd*, 3 CAFC 158, 764 F.2d 1563 (Fed. Cir. 1985).

Thus, in the case before us, in order to achieve a "double substantial transformation," any materials imported into Israel must be substantially transformed into a new and different intermediate article of commerce, which is then used in Israel in the production of the final imported articles--the shirts and pants. The intermediate article itself must be an article of commerce, which must be "readily susceptible of trade, and be an item that persons might well wish to buy and acquire for their own purposes of consumption or production." *Torrington, supra*, at 1570.

As previously described, the foreign origin yarn will be imported into Israel, where it will be knitted or woven into fabric, which will be cut into the component pieces used to make the garments. In determining whether the 35% value-content requirement is satisfied, the cost or value of the cut component pieces in Israel may be included in the 35% computation only if the yarn undergoes the requisite double substantial transformation. Foreign material that does not originate in Israel may be considered as part of the value of material produced in Israel for purposes of the 35% value-content requirement, provided the foreign material

is substantially transformed in Israel and this different product is then transformed into yet another new and different product which is exported to the United States.

Pursuant to 19 CFR 12.130 (e)(1)(iii), knitting and weaving will substantially transform the yarn into a new and different article of commerce resulting in a product of Israel. In addition, the cutting in Israel of the fabric into component parts of the garments results in a second substantial transformation. See HRL 560250, dated April 10, 1997 and HRL 555730 dated February 19, 1991. Therefore, we believe that the double substantial transformation requirement will be satisfied with respect to the yarn used for the production of the shirts or pants. Therefore, the value of the yarn may be included in determining whether the garments meet the 35% value-content requirement.

The USIFTA provides that the term "direct costs of processing operations" means:

those costs either directly incurred in or which can be reasonably allocated, the growth, production, manufacture or assembly, of the specific article under consideration. 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 a party:

- (a) all actual labor costs involved in the growth, production, manufacture or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control and similar personnel; and
- (b) dies, molds, tooling and depreciation on machinery and equipment which are allocable to the specific merchandise.
- (c) research, development, design, engineering and blue print costs insofar as they are allocable to the specific article; and
- (d) costs of inspecting and testing the specific article.

Specifically excluded are costs which are not directly attributable to the merchandise or are not costs of manufacturing the product, such as, "(A) profit, and (B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising and salesmen's salaries, commissions or expenses."

Therefore, the actual Israeli labor costs involved in forming the fabric, cutting the garment parts and tagging the garments may be counted toward the 35% requirement.

However, we are unable to state definitively that the garments will or will not satisfy the 35% value content requirement. Whether the requirement is satisfied can only be ascertained when the "appraised value" of the garments is determined at the time of entry into the United States.

Second Scenario--Fabric Imported into Israel

In the second scenario, formed fabric will be imported into Israel, where it will be cut into component pieces and those piece which will be assembled into the finished garments. For the reasons mentioned in scenario one, if the fabric is cut into the component parts of the garments in Israel, the imported garments will be considered products of Israel under 19 CFR 12.130.

In regard to the 35% value content requirement, the question that arises is whether the foreign fabric may be counted towards satisfying the 35% value content requirement. As we previously explained, the fabric imported into Israel may be counted as "materials produced in Israel" only if it is substantially transformed into a new and different intermediate article of commerce, which is then used in Israel in the production of the final imported articles--the shirts and pants.

In *Texas Instruments, Inc. v. United States*, 681 F.2d 778 (Fed. Cir. 1982), the court implicitly found that the assembly of 3 integrated circuits, photodiodes, one capacitor, one resistor, and a jumper wire onto a flexible circuit board (PCBA) constituted a second substantial transformation. Although it appeared that this assembly procedure did not achieve a high level of complexity, the court pointed out that in situations where all the processing is accomplished in one GSP beneficiary country, the likelihood that the processing constitutes little more than a pass-through operation is greatly diminished. Consequently, if the entire processing operation performed in the single BDC is significant, and the intermediate and final articles are distinct articles of commerce, then the double substantial transformation requirement will be satisfied. Such is the case even though the processing required to convert the intermediate article into the final article is relatively simple and, standing alone, probably would not be considered a substantial transformation. See HRL 071620, dated December 24, 1984 (in view of the overall processing in the BDC, materials were determined to have undergone a double substantial transformation, although the second transformation was a relatively simple assembly process which, if considered alone, would not have conferred origin). In HRL 559137, dated September 7, 1995, we found that knitted and ribbed fabric imported into the Commonwealth of the Northern Mariana Islands (CNMI) where it was cut to shape and then assembled into T-shirts underwent a double substantial transformation for purposes of receiving duty-free treatment under General Note 3(a)(iv), HTSUS.

In HRL 559810, dated August 16, 1996, Customs considered sweatshirts assembled in Israel from a variety of components. The front panel of the sweatshirt was cut to shape and embroidered in China and exported to Israel. The fabric used to produce the sleeves and back of the shirt was exported from China to Israel where it was cut to shape. The neck, cuffs and waist were made of rib trim made in China and exported to Israel to be cut to length and/or width. With regard to the fabric used for the sleeves and back panel of the sweatshirts, Customs determined that the cutting to shape of the imported Chinese fabric substantially transformed the foreign fabric into a new and different intermediate article, ready to be put into the stream of commerce, where they can be bought and sold. While the assembly operation of sewing the sleeves and back panel of the sweatshirt into a finished sweatshirt was not complex enough to constitute a substantial transformation by itself, Customs ascertained that the overall processing operations (i.e., cutting and sewing) performed in Israel were substantial. For this reason, and in view of the production in Israel of distinct articles of commerce in the form of a sweatshirt, Customs held that the double substantial transformation requirement with respect to the sleeves and the back panel was satisfied and the fabric used for these items could be considered towards satisfying the 35% value content requirement.

Consistent with the foregoing, we find that under the second scenario, the foreign fabric which is cut into component pieces, and assembled by sewing into the final garments undergo a double substantial transformation and thus, may be considered as "materials produced in Israel" for purposes of the 35% value content requirement.

Third Scenario--Processing done in the West Bank or Gaza Strip

In the third proposed scenario, foreign origin fabric will be imported into the West Bank or Gaza Strip where all further operations necessary to produce the garments will be performed. This includes cutting the fabric into components, assembling the components, and performing any finishing operations.

Pursuant to the authority conferred by section 9 of the U.S.-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note), the President issued Proclamation No. 6955 dated November 13, 1996 (published in the Federal Register on November 18, 1996 (61 Fed. Reg. 58761)), which modified the Harmonized Tariff Schedule of the United States (HTSUS) (by creating a new General Note 3(a)(v)) to provide duty-free treatment to articles which are the product of the West Bank, Gaza Strip or a qualifying industrial zone, provided certain requirements are met. Such treatment was effective for products of the West Bank, Gaza Strip or a qualifying industrial zone entered or withdrawn from warehouse for consumption on or after November 21, 1996.

Under General Note 3(a)(v), HTSUS, articles the products of the West Bank, Gaza Strip or a qualifying industrial zone which are imported directly to the U.S. from the West Bank, Gaza Strip, a qualifying industrial zone or Israel qualify for duty-free treatment, provided the sum of 1) the cost or value of materials produced

in the West Bank, Gaza Strip, a qualifying industrial zone or Israel, plus 2) the direct costs of processing operations performed in the West Bank, Gaza Strip, a qualifying industrial zone or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a product of the West Bank, Gaza Strip or a qualifying industrial zone if it is either wholly the growth, product or manufacture of one of those areas or a new and different article of commerce that has been grown, produced or manufactured in one of those areas.

First, we must determine if the garments are products of the West Bank or Gaza Strip. To determine whether a textile or apparel article is considered to be a product of the West Bank, Gaza Strip or a qualifying industrial zone, it is necessary to refer to the rules of origin for textiles and apparel products set forth in section 102.21, Customs Regulations (19 CFR 102.21). Pursuant to section 334 of the Uruguay Round Agreements Act, these new rules of origin (published in the Federal Register on September 5, 1995 (60 Fed. Reg. 46188)) became effective for textile or apparel products entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. Thus, except for the purpose of determining whether a good is a product of Israel, the country of origin of a textile or apparel product is determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of 19 CFR 102.21.

Based on the classifications cited previously, the applicable rule in 19 CFR 102.21(e) for the knitted sample shirts and pants would be:

6101-6117..... (1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6101 through 6117 from unassembled components provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

With respect to the woven shirt, the applicable rule would be:

6201-6208..... (1) If the good consists of two more component parts, a change to heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

Because you indicate that the garments in the third scenario will be wholly assembled in the West Bank or Gaza Strip, under the applicable rules of origin for textiles, they would be considered products of the West Bank or Gaza Strip.

With respect to the requirement that the articles be imported directly, General Note 3(a) (v)(B) (1) provides that:

Articles are "imported directly" for purposes of this paragraph if--

(1) they are shipped directly from West, the Gaza Strip, a qualifying industrial zone or Israel into the United States with out passing through the territory of any intermediate country;

Based upon the facts presented, it appears that the garments in the third scenario will satisfy this requirement.

In regard to 35% value content requirement, you are correct in assuming that Customs would apply the double substantial transformation test to determine whether the cost or value of materials imported into the West Bank or Gaza Strip may be counted toward the 35% requirement. Accordingly, for reasons explained in scenario two, if foreign fabric is brought into the West Bank or Gaza Strip where it is cut into components which are sewn together to make the garments, a double substantial transformation would result. Therefore, the value of the fabric may be counted towards satisfying the 35% value content requirement.

You also inquire about whether the cost of transporting the fabric may be counted towards satisfying the 35% value content requirement. General Note 3(a)(v)(D)(1)(II), HTSUS, indicates that "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" may be included in the cost or value of the materials produced in the West Bank or Gaza Strip. Accordingly, the cost of transporting the fabric to the factory in the West Bank or Gaza Strip, if not already included in the value of the fabric, may be counted toward the 35% requirement. In addition, as provided for in General Note 3(a)(v)(E)(1), HTSUS, any direct labor costs attributable to cutting the garment components and assembling and tagging the garments in the West Bank or Gaza Strip may be counted toward satisfying the 35% value content requirement.

However, again, we are unable to state definitively that the garments will or will not satisfy the 35% value content requirement. Whether the requirement is satisfied can only be ascertained when the "appraised value" of the garments is determined at the time of entry into the United States.

HOLDING:

Based on the information provided, the garments in scenarios one and two will be considered products of Israel, and if they are imported directly from Israel and meet the 35 % value content requirement, they will qualify for the preferential duty treatment under the USIFTA. Whether the 35% value content requirement has been met must await actual entry of the merchandise. In scenario three, the garments will be considered products of the West Bank or Gaza Strip, and they will be eligible for preferential duty treatment under General Note 3(a)(v), HTSUS, assuming that they are imported directly from the West Bank, Gaza Strip, or Israel, and the 35 percent value content requirement is satisfied. Again, whether the 35% value content requirement will be met must await actual entry of the merchandise.

A copy of this ruling letter should be attached to the entry document filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John Durant, Director
Commercial Rulings Division