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U.S. Department of Commerce
International Trade Administration
Office of Textiles and Apparel
Room 3001
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

Attn: Ms. Janet Heinzen, Director

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

Dear Ms. Heinzen:

On behalf of The Dominican Republic Association of Free Zones (Adozona), and pursuant to your office's "Request for Public Comment on the Wholly Formed Requirement for Qualifying Woven Fabric Under the Dominican Republic Earned Import Allowance Program," published April 3, 2009 in the *Federal Register* (74 FR 15254), we hereby submit comments objecting to the current interpretation of wholly formed fabric by the U.S. Department of Commerce (Commerce). Wholly formed fabric under the DR 2:1 Earned Import Allowance Program does not require the fabric to be dyed and finished in the United States.

Commerce's interpretation will negatively impact the apparel makers in the Dominican Republic. Already, one company in the Dominican Republic has had to close in part due to the inability to use this program in a timely fashion, resulting in the loss of several hundred jobs. This job loss adds to the already declining employment in the DR and issues surrounding unemployed persons. If DR companies do not stay afloat there will be no U.S. fabric being exported, regardless of dyeing or finishing and the viability of this preference program will be seriously threatened.

We respectfully submit the following information pertaining to the interpretation of the requirements for U.S. wholly formed fabric under the DR 2:1 program.

First, the DR 2:1 program was promulgated as an amendment to the CAFTA-DR implementing legislation. It is therefore a free standing preferential program that is currently limited to certain cotton woven pants and to only the manufacture of such pants in the Dominican Republic. It is not a part of the CAFTA-DR nor is it a part of the Caribbean Basin Trade Partnership Act. The provisions in this preference Act should not be confused with those of any other laws or agreements.

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 a 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.

As stated previously, the DR 2:1 program is not an amendment to the CAFTA-DR agreement. It is a unilateral U.S. preference program, passed as an amendment to the CAFTA-DR implementing legislation as a legislative vehicle, not as an amendment to the agreement. The CAFTA-DR amendment process was not followed for the purpose of entry into force of this legislation. 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.

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. Further, the ability to document the export of the fabric to a dyeing and finishing facility then to the Dominican Republic is incumbent upon the participants supplying information to Commerce for participation in the program.

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.

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)]

Both the Andean Trade Promotion and Drug Eradication Act (ATPDEA) and the African Growth and Opportunity Act (AGOA) contain identical definitions of wholly formed fabric. "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..." (19 CFR 10.242 for ATPDEA, and 19 CFR 10.212 for AGOA)

The DR 2:1 is a unilateral preference program similar to CBTPA, ATPDEA and AGOA. It would be inconsistent and yield unforeseeable and unintended consequences if the language of the legislation is interpreted differently. It is clear from these unilateral programs that if the intent is that fabric dyeing and finishing be required in addition to being wholly formed, that it is a separate requirement.

CONCLUSION

We therefore request on behalf of Adozona that Commerce define wholly formed fabric for the purpose of the DR 2:1 Earned Import Allowance program consistently with CBTPA, AGOA and ATPDEA to *NOT* include dyeing or finishing operations. We also request that Commerce publish such definition immediately after the comment period so as to minimize additional delay in full implementation of this preference program crucial to the industries of both the United States and Dominican Republic.

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

Elise Shibles

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