

Textiles and Apparel Industry Update

TEXTILES UPDATE

The ABA Section of International Law held a trade and textile roundtable discussion on January 13, 2005. Speakers included Caroyl Miller, Deputy Textiles Negotiator (USTR); Peter Craig, Minister-Counselor for Trade, Embassy of Mauritius; and Ashraf Hayat, Minister for Trade, Embassy of Pakistan.

Ms. Miller first discussed what tools remain to regulate textiles in a post-MFA world. Among these, she highlighted: (1) tariffs (which average 12%); (2) compliance with international labor and environmental standards; (3) traditional trade remedies (antidumping, safeguard); (4) textile-specific rules in FTAs; (5) and preference programs (AGOA, CBI, Andean Free Trade). She also briefly summarized USTR's assessment of what new production and trade patterns would look like. Not surprisingly, Ms. Miller stated that China would benefit most in the post-quota era and that India and Pakistan were also expected to do quite well. Smaller developing countries, on the other hand, were expected to encounter problems. Ms. Miller suggested that the WTO Doha round would provide an opportunity for disadvantaged countries to raise their concerns. She also noted that USTR anticipated that countries would diversify their production base into other areas of textiles and apparel, and even other sectors. Ms. Miller acknowledged that the domestic industry may have problems bringing antidumping cases, citing difficulty establishing stand-

ing, but then stated that third-country dumping actions could be explored. She declined to comment on a question concerning the Administration's assessment of the CIT's recent preliminary injunction preventing the US from entertaining threat-based actions brought under China textile-specific safeguard regulations.

Mr. Hayat noted that Pakistan anticipates new opportunities in the new quota-free era. With a fully integrated textile sector, Pakistan is expected to be a competitive producer. Mr. Hayat commented that Pakistan will not do as well as China and India, but is expecting to increase its share of exports. He views the end of the MFA as a positive event because financing will no longer be driven by quota allocations, but competitiveness. Pakistan's government has taken steps to create incentives for further increasing its production in the form of tax breaks for related capital investments.

Mr. Craig expressed concern about the end of MFA for Africa, noting the importance of textile production for the region. From Africa's perspective, textile and apparel cannot be separated from development. Mr. Craig questioned how great a competitive edge African countries would gain from compliance with internationally recognized labor standards, which is one of several eligibility criteria for textile benefits under AGOA. He also noted that program benefits are discretionary and provide limited certainty, citing the recent removal of the Ivory Coast from the list of countries eligible

to receive benefits for failure to protect U.S. investments. African countries cannot afford to be locked out of Western markets.

JACKETS MAY NOT MAKE THE SUIT

Customs is proposing a change in the classification of men's or boys' wool suit-type jackets. Currently these items are classified under HTS subheading 6203.31.5010, the provision for Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bid and brace overalls, breeches, and shorts (other than swimwear) (con.): Suit-type jackets and blazers: Of wool or fine animal hair: Of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less: For suits described in Note 3(a), "carrying a normal or most-favored nation (MFN) rate of duty of 17.5 percent ad valorem and classified in textile category 443. Under Note 3(a) the term "suit" means a set of garments composed of two or three pieces including one piece each for the upper and lower portions of the body.

Since jackets are sold separately, Customs suggests that the jackets do not meet the definition suits as outlined in Note 3(a). Therefore Customs is proposing a change in the classification of jackets to HTS subheading 6203.31.5020, the provision for Men's or boys' suits, ensembles suit-type jackets, blazers, trousers, bid and brace overalls, breeches and shorts (other than swimwear) (con.): Suit-type jackets and blazers: Of wool or fine animal hair: Of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less: Other carrying a normal or MFN rate of duty of 17.5 percent ad valorem and classified in textile category 433. This subheading covers all items under the heading that do not meet the definition of a

suit, such as jackets, breeches, etc when sold separately.

Although the change in tariff classification will not affect the duty rate, the change from textile category 443 to category 433 may have some implications regarding quota limits, depending on the country of import. For example, the products subject to the proposed ruling change are made in Guatemala. There is only a quota on textile category 443 and not on textile category 433. For wool apparel inputs from Guatemala, the change in classification will allow for the importation of men's and boys' wool suit-type jackets without a quota restriction.

CITA TO APPLY QUOTAS TO PROTECT A SECTION OF THE U.S. TEXTILES MARKET

On November 18, 2003, the Committee for the Implementation of Textile Agreements (CITA) released a notice indicating its intention to re-impose quotas on imports from China on the following products:

- Knit fabric (category 222);
- Brassieres (category 349/649); and
- Dressing gowns (category 350/650).

The use of a special safeguard (quotas) is authorized in a bilateral agreement between the United States and China that was negotiated prior to China's accession to the World Trade Organization. The provision permits the use of safeguard measures when there is evidence of "market disruption" that could affect the orderly development of trade.

As a result of CITA's decision and in accordance with terms of the WTO protocol of accession for China, the Customs Service will be directed to place an annual quota cap of 7.5 percent on import growth of articles

covered by this decision. Based on trade levels for these products for the year ending August 2003, a cap of 7.5 percent growth will result in the following quotas:

222 9,514,549 kilograms

349/649 16,510,281 dozens

350/650 3,830,171 dozens

Since the request for quotas falls within the last quarter of the calendar year, the quotas can remain in effect until November 2004. The protocol directs that the United States and China must begin consultations within 30 days of the request for quotas being delivered to China. Thereafter, the countries have 90 days to reach a mutually satisfactory solution.

The domestic textile and apparel industry originally requested the inclusion of knit cotton and man-made fiber gloves in the safeguard action. CITA rejected, on a technicality, the petition because the production data were not current and the industry groups failed to make a distinction between woven gloves, which are still under quota, and knit gloves. The united textile and fiber coalition intends to file a new petition on knit cotton and man-made fiber gloves as soon as practicable – likely early this fall.

CUSTOMS INCREASES DUTY ON CERTAIN LEATHER PRODUCTS

Customs has recently issued numerous rate advances on leather handbags and other leather articles classified under HTS heading 4202 (trunks, suit cases, vanity cases, briefcases, handbags, wallets, purses, sports bags, and similar types of carrying cases), effectively increasing the duties on these products. For example, Customs has taken the position that leather handbags coated with less than 0.05

mm of plastic are classified as “handbags with outer surface of sheeting plastic” under HTS subheading 4202.22.16, dutiable at 16.4 percent ad valorem, rather than as “handbags . . . with outer surface of leather,” under HTS subheading 4202.21.60, dutiable at 10 percent ad valorem. See HQ 963618 (August 2, 2002).

As a result of Customs’ narrow interpretation of the term “outer surface of leather,” the duty on numerous leather articles classified under HTS heading 4202 will be increased significantly. Customs’ narrow interpretation of the term “with outer surface of leather” appears to be contrary to commercial practices and definitions, and contrary to a plain interpretation of the tariff schedules. Also, if Customs has classified leather goods imported by Sears at the lower duty in the past (“prior treatment”), then Customs may not increase the duties on these goods without first publishing a notice proposing to change the classification and requesting public comments on the proposed reclassification. See 19 U.S.C. 1625.

ITC SEEKS INPUT FOR INVESTIGATION ON COMPETITIVENESS OF CERTAIN FOREIGN TEXTILE AND APPAREL SUPPLIERS TO THE U.S. MARKET

On October 11, 2002, pursuant to a request from United States Trade Representative Robert Zoellick, the International Trade Commission (ITC) initiated a general fact-finding investigation (Inv. No. 332-448) on the textile and apparel industries of certain countries that currently are suppliers to the U.S. market, in order to assess their competitiveness and other factors affecting their adjustment to the Uruguay Round Agreement on Textiles and Clothing (“ATC”). The ATC calls for the complete elimination of all textile

import quotas that were established under the Multifiber Arrangement. Countries under investigation include Bangladesh, China, Egypt, Hong Kong, India, Indonesia, Korea, Malaysia, Macao, Pakistan, the Philippines, Sri Lanka, Taiwan, Thailand, and Turkey.

The ITC will also investigate Mexico and other countries that have preferential access to the U.S. market. In conjunction with this investigation, the ITC will hold a public hearing on January 22, 2003 and will accept written comments no later than February 4, 2003.

For more information see www.usitc.gov.

SECOND ANNUAL ITC REPORT ON U.S. MARKET CONDITIONS FOR CERTAIN WOOL ARTICLES

Certain Wool Articles: Second Annual Report on U.S. Market Conditions, Inv. No. 332-427, USITC Pub. 3544 (Sept. 2002), is the second and final report issued as part of the ITC's general fact-finding investigation that examines U.S. market conditions for men's worsted wool tailored clothing, worsted wool fabrics used in such clothing, and inputs used in such fabrics. As a result of its investigation, the ITC reports that the U.S. market for these wool articles fell in 2001 and available data show that it will likely fall again in 2002.

A copy of this report is posted on the ITC's website at www.usitc.gov.

U.S. MANUFACTURERS SEEK RELIEF UNDER TEXTILE-SPECIFIC SAFEGUARDS FOR CHINA

U.S. producers have, for the first time, sought action under the textile-specific safeguard for China for market disruptions as provided in the U.S.-China Bilateral WTO Agreement,

and have requested that the President implement quotas on surging imports from China in five product categories: knit fabric, gloves, nightwear/dressing gowns, brassieres, and luggage. On September 5, 2002, the American Textile Manufacturers Institute ("ATMI"), requested relief under this provision, alleging that imports from these categories are either disrupting or threatening to disrupt the U.S. market. While all ATMI members produce knit fabric, they do not produce products in the remaining four categories. They do, however, produce the fabric used to make these products. The Bush Administration has delegated responsibility for overseeing requests and imposing safeguards to the Committee for the Implementation of Textile Agreements ("CITA"). Should CITA accept ATMI's petition, the U.S. would have 90 days to consult with China in order to reach a mutual resolution. If consultations fail, CITA is authorized to impose import restraints that can last no longer than one year without reapplication, unless China agrees otherwise.

FAST-TRACK LEGISLATION ON DYEING AND FINISHING

Legislation currently awaiting a joint House-Senate conference would require that only apparel made from fabric that is dyed and finished in the United States would qualify for duty-free treatment under trade preference programs for Caribbean and Central American countries. The legislation, incorporated in a supplemental appropriations bill, was intended to fulfill a promise made by GOP house leaders to textile district representatives in exchange for their votes in favor of the legislation that provides Trade Promotion Authority ("TPA") to the President. (TPA, known previously as "fast track," gives the President the ability to negotiate international

trade agreements that are ultimately subject only to a straight “up” or “down” vote by the Senate). GOP House leaders promised textile district representatives that they would pass legislation requiring the knit and woven fabric of imported Caribbean-region apparel to undergo all dyeing, finishing, and printing in the U.S. in order for the apparel to be eligible for duty-free treatment under the Caribbean Basin Trade Partnership Act. Textile industry representatives, led by Jim DeMint (R-SC), argue that the House bill as written contains a loophole that would permit hybrid-cut items – i.e., apparel made from parts cut in both the U.S. and Caribbean – that are not finished, dyed, or printed in the U.S. to enter duty free. Despite assurances from House Ways & Means Committee Chairman Bill Thomas (R-CA), the bill’s drafter, that the language clearly applies to hybrid-cut items as well, textile industry representatives continue to press to ensure that the language of the proposed bill carries out its promised effect.

STATUS OF SHORT-SUPPLY PETITIONS

The North American Free Trade Agreement (“NAFTA”), African Growth and Opportunity Act (“AGOA”), and the Caribbean Basin Trade Partnership Act (“CBTPA”) provide for quota- and duty-free treatment for qualifying textile and apparel products from designated beneficiary countries. Typically, beneficial treatment is limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. If the Committee for the Implementation of Textile Agreements (“CITA”) determines, however, that such items are in “short supply” – i.e., they cannot be supplied by the domestic industry in commercial quantities in a timely manner – articles that are both cut or knit-to-shape, sewn, or otherwise assembled in one

or more beneficiary countries from fabric or yarn that is not formed in the United States may enter the U.S. quota- and duty-free. The status of certain petitions is as follows:

NORTH AMERICAN FREE TRADE AGREEMENT

- **Certain Products Made of Yarn from Combed Fine Animal Hair**

Petition by Amicale Industries, Inc. alleging that yarn of combed fine animal hair classified in HTS subheading 5108.20.60 cannot be supplied by the NAFTA region in commercial quantities in a timely manner. Filed July 12, 2002. Comment period closed September 20, 2002.

- **Plain Weave Cotton/Polyester Woven Fabric for Mens’ and Boys’ Shirts**

Petition claiming that these fabrics are currently being produced in commercial quantities in the United States and are available in a timely manner filed on February 26, 2002. Comment period closed on April 24, 2002. Final designation is pending.

- **Certain Nylon Filament Yarn**

Petition alleging that certain untextured yarns of nylon could not be supplied by the domestic industry withdrawn on December 6, 2001.

For updated information on the filing and status of existing NAFTA short supply petitions, visit www.otexa.ita.doc.gov/nafta_short_supply.htm.

AFRICAN GROWTH AND OPPORTUNITY ACT

- **Cuprammonium Rayon Filament Yarn**

On April 24, 2002, CITA determined that

cuprammonium rayon filament yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and approved the product as eligible for quota-free and duty-free treatment under AGOA.

- **Certain Fabrics for Certain Apparel Articles**

Petition claiming that certain fabrics for trousers, shorts, skirts, dresses, handkerchiefs, dressing gowns, boxer shorts, and other apparel cannot be supplied by the domestic industry in a timely manner filed on February 28, 2002. Comment period closed March 23, 2002. Final designation is pending.

UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

- **Certain 100 Percent Stock-Dyed Worsted Wool Woven Fabric**

On September 19, 2002, CITA denied Oxford Industries' request to extend CBTPA preferential treatment to certain 100 percent worsted, or combed, wool woven fabric, stock-dyed of wool yarns used in the production of men's suit jackets, based on its determination that the subject merchandise can be supplied by the domestic industry in commercial quantities in a timely manner.

- **Certain Fabrics for Certain Apparel Articles**

On August 29, 2002, CITA determined that certain fabrics for trousers, shorts, skirts, dresses, handkerchiefs, dressing gowns, boxer shorts, and other apparel cannot be supplied by the domestic industry in a timely manner filed and approved these fabrics as eligible for quota-free and

duty free treatment under CBTPA.

- **Certain 100 Percent Cotton Yarn-Dyed Flannel**

On August 15, 2002, CITA determined that 100 percent cotton yarn-dyed flannel fabrics classified under HTS 5208.43.00 can be supplied by the domestic industry in commercial quantities in a timely manner, and denied Intradeco's June 11, 2002 request.

- **Yarn of Combed Cashmere, Cashmere Blends, and Camel Hair**

On May 22, 2002, CITA determined that the subject fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner, and approved the products as eligible for quota-free and dutyfree treatment under CBTPA.

- **Cuprammonium Rayon Filament Yarn**

On April 24, 2002, CITA determined that cuprammonium rayon filament yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner, and approved the product as eligible for quota-free and duty-free treatment under CBTPA.

- **Certain Shirting Fabrics**

Petition denied on March 5, 2002 based on CITA's determination that certain fabrics used in women's and girls' blouses can be supplied by a domestic industry in commercial quantities and in a timely manner.

For updated information on the filing and current status of pending AGOA and CBTPA short supply petitions, as well as final designations on other products, visit http://otexa.ita.doc.gov/short_supply.htm.

CUSTOMS PUBLISHES LIST OF FOREIGN ENTITIES FOUND TO HAVE VIOLATED TRANSSHIPMENT AND COUNTRY OF ORIGIN REGULATIONS

Importers of textile and apparel products must exercise reasonable care to ensure that they are complying with the government's transshipment and country of origin regulations. The U.S. Bureau of Customs and Border Protection regularly publishes a list of foreign entities that have been found to have violated those regulations, and importers should exercise particular care if they are engaged in transactions with an identified entity.

This link will take you to a site maintained by the U.S. Bureau of Customs and Border Protection (http://www.customs.gov/xp/cgov/import/textiles_and_quotas/) that, in turn, contains a link to a list of foreign entities that have been found to have violated those rules.

For additional guidance on regulations covering textile imports, consult Customs' list of Informed Compliance Publications about Textiles at www.customs.gov/impexpo/icpt.htm.

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