

Denim Fabric: Commercial Availability in AGOA Countries During Fiscal Year 2009

Investigation No. AGOA-003

Publication 4027

August 2008

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
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Staff assigned

Kimberlie Freund, Project Leader
Andrea Boron, Deputy Project Leader
William W. Gearhart, Attorney
Jackie W. Jones, International Trade Analyst
Dawn Heuschel, International Trade Analyst
Wendy Cuesto, International Trade Analyst

Primary Reviewers

Jeff Clark, International Trade Analyst
William Deese, International Economist

Special assistance from

Brenda Carroll, Staff Assistant
Justino de la Cruz, International Economist
Judy Bryant, Trade Information Specialist
Eric Land, International Trade Analyst
Joanna Lo, Investigator
Jan Summers, Attorney

Under the direction of

Dennis Rapkins, Chief, Chemicals and Textiles Division

NOTICE

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Determination

Based on the information developed in the subject investigation, the United States International Trade Commission, pursuant to section 112(c)(2)(B)(ii) of the African Growth and Opportunity Act (AGOA),¹ determines that (1) denim fabric² produced in beneficiary sub-Saharan African (SSA) countries will be available in commercial quantities during the period October 1, 2008 through September 30, 2009 (fiscal year 2009) for use by lesser developed beneficiary (LDB) SSA countries in the production of apparel articles receiving U.S. preferential treatment, and (2) the quantity of such denim fabric that will be so available during fiscal year 2009 is 18,260,400 square meters equivalent (SMEs).³

Background

Section 112(c)(2)(A) of AGOA requires the Commission, following receipt of a petition, to determine whether a fabric or yarn is available in commercial quantities for use by LDB SSA countries, and if the Commission makes an affirmative determination, section 112(c)(2)(B)(i) of AGOA requires the Commission to determine the quantity of such fabric or yarn that will be so available in the following fiscal year. Section 112(c)(2)(B)(ii) of AGOA requires the Commission to make similar determinations for the following year and each year thereafter through 2012 with respect to whether the fabric or yarn will be available in commercial quantities and the quantity so available. Section 112(c)(2)(C) of AGOA deemed denim fabric to be available in commercial quantities in the amount of 30 million square meters equivalent (SMEs) during fiscal year 2007, as if the Commission had made an affirmative determination in response to a petition.

The determinations that the Commission made in this investigation are with respect to whether the subject denim fabric will be available in commercial quantities for such use during fiscal year 2009, and, if so, the quantity that will be so available. This is the second such set of determinations that the Commission has made under section 112(c)(2)(B)(ii) with respect to the subject denim fabric. In September 2007, the Commission, in investigation No. AGOA-001, determined that the subject denim fabric will be available in commercial quantities for such use during fiscal year 2008, and that the quantity that will be available is 21,303,613 square meters equivalent.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing in connection therewith was given by posting a copy of the notice on the Commission's web site (www.usitc.gov) and by publishing the notice in the Federal Register of December 12, 2007 (72 F.R. 70609). The hearing was held on April 9, 2008, in Washington, D.C.; all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ 19 U.S.C. 3721(c)(2)(B)(ii).

² Denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule. See section 112(c)(2)(C) of AGOA, 19 U.S.C. 3721(c)(2)(C).

³ Commissioner Dean A. Pinkert determines that the quantity that will be so available during fiscal year 2009 is within a range from 19,054,860 SMEs to 20,515,692 SMEs.

VIEWS OF THE COMMISSION

INTRODUCTION AND DETERMINATION

Based on the information before us, we have determined that the subject denim fabric¹ produced in beneficiary sub-Saharan African (SSA) countries will be available in commercial quantities during the period October 1, 2008 - September 30, 2009 (fiscal year 2009) for use by lesser developed beneficiary (LDB) SSA countries in the production of apparel articles receiving U.S. preferential treatment. We also have determined that the quantity of such denim fabric that will be so available during fiscal year 2009 is 18,260,400 square meters equivalent (SMEs).²

I. STATUTORY OVERVIEW

The statute potentially requires the Commission to make two determinations in this investigation:

- (1) whether the subject denim fabric will be available in commercial quantities for use by LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment during fiscal year 2009, and
- (2) if so, the quantity of such denim fabric that will be so available during fiscal year 2009.³

Thus, we are required to make the second determination only if our first determination is in the affirmative. The denim fabric that is the subject of this investigation is defined in the statute as “denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule.”⁴

This is the third investigation that the Commission has conducted under section 112(c)(2) of AGOA. In investigation No. AGOA-001, completed in September 2007, the Commission made determinations similar to those it must make in this investigation regarding the availability of subject denim fabric, and the quantity available, during fiscal year 2008.⁵ In its written views in that investigation, the Commission addressed at length many of the legal and other issues posed by the current investigation. In investigation No. AGOA-002, completed in July 2008, the Commission determined the extent to which the subject denim fabric deemed available during fiscal year 2007 was used in the production of apparel articles receiving U.S. preferential treatment during that fiscal year.⁶

¹ Denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule. See section 112(c)(2)(C) of AGOA, 19 U.S.C. 3721(c)(2)(C).

² Commissioner Dean A. Pinkert determines that the subject denim fabric produced in beneficiary SSA countries will be available in commercial quantities during fiscal year 2009 within a range from 19,054,860 SMEs to 20,515,692 SMEs.

³ Section 112(c)(2)(B)(ii) of the African Growth and Opportunity Act (AGOA), as amended (19 U.S.C. 3721(c)(2)(B)(ii)). Section 112(c)(2)(B)(ii) provides as follows:

In each case in which the Commission determines that a fabric or yarn is available in commercial quantities under subparagraph (A) for an applicable 1-year period, the Commission shall determine, before the end of that applicable 1-year period –

- (I) whether the fabric or yarn produced in beneficiary sub-Saharan African countries will be available in commercial quantities in the succeeding applicable 1-year period; and
- (II) if so, the quantity of the fabric or yarn that will be so available in that succeeding 1-year period, subject to clause (iii).

⁴ 19 U.S.C. 3721(c)(2)(C).

⁵ *Commercial Availability of Fabric & Yarns in AGOA Countries: Certain Denim*, Inv. No. AGOA-07-001 (subsequently re-designated as Inv. No. AGOA-001), USITC Publication 3950 (Sept. 2007).

⁶ *Denim Fabric: Use in AGOA Countries During Fiscal Year 2007*, Inv. No. AGOA-002, USITC Publication 4021 (July 2008).

The statute defines a number of the statutory terms, but does not define others. For example, it defines the terms “beneficiary sub-Saharan African country”⁷ and “lesser developed beneficiary sub-Saharan African country,”⁸ and defines the term “1-year period” to mean October 1-September 30.⁹ However, it does not define other terms such as “available,” “commercial quantities,” or “use,” or set out a specific method for calculating the quantity available. As we explained in our views in investigation No. AGOA-001 and as explained further below, we conclude that the meaning of these other terms and the appropriate method for calculating the quantity available can be reasonably determined from the statutory context and the ordinary meaning of the terms themselves.

II. DETERMINATION CONCERNING WHETHER THE SUBJECT DENIM FABRIC WILL BE AVAILABLE IN COMMERCIAL QUANTITIES DURING FISCAL YEAR 2009

Statutory framework. Under the statute, we must first determine whether subject denim fabric produced in beneficiary SSA countries will be available in commercial quantities during fiscal year 2009 in LDB SSA countries for use in the production of apparel destined for the U.S. market. Specifically, the statute requires that we determine, in this investigation, whether subject denim fabric “produced in beneficiary sub-Saharan African countries will be available in commercial quantities in the succeeding applicable 1-year period” (section 112(c)(2)(B)(ii)(I) of AGOA). As noted above, the statute defines some terms such as the “applicable 1-year period” and beneficiary SSA countries,¹⁰ but it does not define other terms such as “will be available” or “commercial quantities,” or expressly state where the fabric (or yarn¹¹) would be available and for what purpose, or provide a list of factors that the Commission should consider.

Arguments of the parties. In hearing testimony, the African Coalition for Trade (ACT)¹² said that the best evidence the Commission can use in predicting the availability of denim fabric in fiscal year 2009 is the actual consumption of denim fabric during the most recent 12-month period. ACT urged that the Commission follow the practice set out in its September 2007 report and “again look at the most recently available information on denim [fabric] consumption and use that as the baseline for predicting what the future is likely to be.”¹³ ACT said that its data indicate that approximately 28.2 million SMEs of subject denim will likely be consumed in LDB SSA countries in the production of qualifying apparel during fiscal year 2008, and recommended that the Commission use that number as the baseline for predicting availability for fiscal year 2009.¹⁴ Nien Hsing, the largest producer of subject denim fabric in the beneficiary SSA countries,¹⁵ also urged, in its hearing testimony, that the Commission follow the approach it used in September 2007 in making its determinations for fiscal year 2008, and rely on sales and production for the prior 12 months.¹⁶ Nien Hsing estimated that it will ship 22.2 million SMEs of subject denim fabric to apparel manufacturers in LDB SSA countries during fiscal year 2008 for use in

⁷ Beneficiary sub-Saharan African countries are those listed in section 107 of AGOA that the President has designated as eligible for benefits under 19 U.S.C. 2466a(a). *See* 19 U.S.C. 3721(f)(2), citing 19 U.S.C. 2466a(c), which cross-references the list in 19 U.S.C. 3706 (section 107 of AGOA).

⁸ Lesser developed beneficiary sub-Saharan African countries are those countries with a per capita GNP of less than \$1,500 in 1998 as measured by the International Bank for Reconstruction and Development, as well as Botswana and Namibia. 19 U.S.C. 3721(c)(5)(D). The list includes all beneficiary sub-Saharan African countries except South Africa and Mauritius.

⁹ 19 U.S.C. 3721(c)(5)(A).

¹⁰ *See* 19 U.S.C. 3721(c)(5)(A) and 19 U.S.C. 3721(f)(2), respectively.

¹¹ The statute provides for petitions and Commission determinations with respect to “fabric or yarn.” In describing the statutory requirements, to simplify wording, we will refer simply to “fabric” rather than to “fabric or yarn.”

¹² The ACT representative said that ACT’s membership includes all of the denim fabric producers and many of the leading apparel producers in Africa. Hearing transcript (April 9, 2008) at 6 (Ryberg).

¹³ Transcript at 9-10 (Ryberg).

¹⁴ Transcript at 10 (Ryberg).

¹⁵ Staff Report (SR) -7.

¹⁶ Transcript at 18 (Han).

the production of apparel goods for the U.S. market.¹⁷ None of the parties argued that the Commission should make a negative determination with respect to availability during fiscal year 2009.

Finding and analysis. Based on the facts obtained in this investigation, we determine that subject denim fabric produced in beneficiary SSA countries will be available in commercial quantities for use by LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment during the period October 1, 2008 - September 30, 2009. Accordingly, we make an affirmative determination.

In the absence of definitions in either the statute or its legislative history for the terms “will be available” and “in commercial quantities,” we considered the statutory context and the ordinary meaning of terms in deciding how those terms should be defined and the factors we should consider. As in investigation No. AGOA-001, we find that the term “will be available” indicates a future condition. The use of the term “will,” as opposed to “may” or “might,” and unmodified by the term “likely,” suggests a relative degree of certainty as opposed to mere possibility.¹⁸ Based on the statutory language in section 112(c)(2) of AGOA, we conclude it is appropriate to consider evidence relating to indicators such as recent production and sales, particularly during the past year; inventories and pending orders; evidence that the fabric of a company has been pre-qualified with respect to performance or technical characteristics for use in apparel by an apparel importer; and evidence that necessary plant and equipment are in place.¹⁹ The availability of evidence with respect to these indicators, and its relative importance, will likely vary from case to case. In view of the fact that our determination concerns a future condition, we also find it appropriate to give weight to projected data as well as historic data, provided that the projections are supported by evidence such as orders, continuation of a business relationship in the new year, and trends in shipments.²⁰

As in investigation No. AGOA-001, we find that the term “commercial quantities” means a quantity of fabric that would be in an amount sufficient to meet the needs of one or more apparel manufacturers in an LDB SSA country, and something more than a sample.²¹ We note that the statute does not specify a minimum numerical amount, but rather uses the modifier “commercial.” This suggests that the quantity that will be available should be of sufficient size to satisfy a commercial order for the subject fabric from an apparel manufacturer in an LDB SSA country. We also consider the term “commercial quantities” to include subject fabric without regard to whether it is sold to a related or unrelated apparel manufacturer, provided that the apparel is produced in an LDB SSA country. The term “commercial” is used only as a modifier for the term “quantities,”²² indicating that it refers to the quantity of fabric available, rather than the manner in which the fabric is sold.

In this investigation the Commission gathered information from a variety of sources, including questionnaire responses from SSA producers of the subject denim fabric, LDB SSA manufacturers of apparel made from the subject denim fabric, and U.S. importers of apparel made from the subject denim fabric, as well as from follow-up interviews and e-mail correspondence from selected respondents.²³ The information gathered varied with the type of questionnaire, but included data on production, capacity,

¹⁷ Transcript at 19 (Han). The projected quantity of 22.2 million SMEs is an unadjusted number; for an explanation of Commission adjustments, see SR, Appendix, Table C.1, note a.

¹⁸ Inv. No. AGOA-001, at 6.

¹⁹ These indicators are similar to those that we considered in investigation No. AGOA-001, at 7, and that we consider under trade remedy statutes in making findings regarding a future event, such as the threat of material injury.

²⁰ Commissioner Pinkert finds that the term “will be available” refers to the quantity of fabric that is reasonably expected to be available. He explains his analysis, including how he analyzes projections, in more depth in his Separate Views.

²¹ Inv. No. AGOA-001, at 10.

²² Inv. No. AGOA-001, at 10.

²³ SR-2.

inventories, and shipments of the subject denim fabric to various markets, as well as purchases by apparel manufacturers and imports by U.S. apparel retailers. In general, the questionnaires sought actual and projected data for fiscal years 2007 through 2009.²⁴ Commission staff also visited SSA producers of the subject denim fabric and certain LDB SSA denim apparel manufacturers.²⁵ The Commission obtained data from beneficiary SSA country producers of subject denim fabric on their actual shipments to LDB SSA countries for fiscal year 2007 and on projected shipments for fiscal year 2008. The Commission also obtained data from these firms on their total projected shipments of all SSA denim fabric for fiscal year 2009. They reported that their production of subject denim fabric is largely made to order,²⁶ with a lead time generally of about 3 months.²⁷ They also reported that their inventories were small throughout the period, *** percent on average.²⁸

In view of the above, in determining whether the subject denim will be available in commercial quantities during fiscal year 2009, we relied principally on projected shipments of subject denim fabric provided by beneficiary SSA country denim fabric producers for fiscal years 2008 and 2009, and made allocations based on fiscal year 2008 share of shipments to LDB SSA countries when appropriate. Nien Hsing, the largest denim fabric producer in the beneficiary SSA countries during fiscal year 2008 and a consistent supplier in recent years to apparel manufacturers in LDB SSA countries that export apparel to the U.S. market, asserted that the best indicator of whether the subject denim fabric will be available in commercial quantities during fiscal year 2009 is production and sales of subject denim during fiscal year 2008.²⁹ Nien Hsing provided projections for production and sales during fiscal year 2008, including sales to apparel manufacturers in LDB SSA countries for use in apparel destined for the U.S. market.³⁰ ***³¹ The Commission also obtained information from selected U.S. importers of apparel. Commission estimates, based on information provided by those importers, indicate that U.S. importers of apparel from LDB SSA countries expect to import significant quantities of apparel containing subject denim fabric during fiscal year 2009.³²

The projections as to availability of subject denim fabric provided by beneficiary SSA country fabric producers and Commission estimates of U.S. apparel imports show, beyond any reasonable doubt, that subject denim fabric produced in beneficiary SSA countries will be available in commercial quantities during fiscal year 2009 for use in LDB SSA countries in the production of apparel for the U.S. market. Although the producers of the subject denim fabric were unable to document any orders for fiscal year 2009 in light of the relatively short lead times for filling orders, the information provided relating to projected production and sales during fiscal year 2009 and estimates of U.S. apparel imports show that subject denim fabric will continue to be available in commercial quantities in LDB SSA countries for use in producing apparel destined for the U.S. market during fiscal year 2009. Accordingly, we have made an affirmative determination.

²⁴ SR-3.

²⁵ SR-3.

²⁶ SR-10.

²⁷ Inv. No. AGOA-001, SR-22

²⁸ SR-10.

²⁹ Transcript at 19 (Han).

³⁰ See unadjusted projections of Nien Hsing in the Transcript at 19 (Han). The projected quantity of 22.2 million SMEs cited by Mr. Han is an unadjusted number; for an explanation of Commission adjustments, see SR, Appendix, Table C.1, note a.

³¹ SR, Appendix, Table D.2. ***

³² SR-20, Table 8.

III. DETERMINATION CONCERNING THE QUANTITY OF SUBJECT DENIM FABRIC THAT WILL BE AVAILABLE IN COMMERCIAL QUANTITIES DURING FISCAL YEAR 2009

Statutory framework. Having determined that the subject denim fabric will be available in commercial quantities for use in LDB SSA countries during fiscal year 2009, we must now determine the quantity of such denim fabric that will be available during fiscal year 2009. Section 112(c)(2)(B)(ii)(II) of AGOA states that we must determine “the quantity of fabric or yarn that will be so available in that succeeding 1-year period, subject to clause (iii).”³³ The statute does not list the factors the Commission should consider or otherwise provide specific guidance on how the Commission should calculate this number.

Arguments of the parties. In hearing testimony, ACT said that its data indicate that approximately 28.2 million SMEs of subject denim will likely be consumed in LDB SSA countries in the production of apparel for the U.S. market during fiscal year 2008, and recommended that the Commission use that number as the baseline for predicting availability for fiscal year 2009. ACT noted that its estimate for fiscal year 2008 consumption includes 5.9 million SMEs for RS Denim.³⁴ ACT noted that RS Denim is a new company making sales for the first time, and suggested that their data are “less accurate” than data from firms with established track records.³⁵ Nien Hsing estimated that it will ship 22.2 million SMEs of subject denim fabric to apparel manufacturers in LDB SSA countries during fiscal year 2008 for use in the production of apparel goods for the U.S. market, and suggested that the Commission adjust this number upward to include the quantity produced by other African denim producers for sale to apparel manufacturers in LDB SSA countries.³⁶

Finding and analysis. Based on the facts obtained in the investigation, we have determined that the quantity of subject denim fabric that will be available during fiscal year 2009 is 18,260,400 SMEs.³⁷

As in our determination above, we conclude that our determination with respect to the quantity available should be the quantity available for use in LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment. Also, consistent with our determination above, the quantity that we determine “will be available” is one that we believe is “reasonably certain to be available,” as opposed to theoretically possible. As above, we find that evidence of recent past production and sales, particularly during the past year; inventories and pending orders; and evidence that necessary plant and equipment are in place are likely to represent the best information in determining the quantity of subject fabric that will be available. We have given appropriate weight to projected data as well as historic data, to the extent that the projections are supported by evidence such as orders, continuation of business relationships into the new year, and trends in shipments. Consistent with our first determination, we have included in our calculation subject denim fabric without regard to whether it will be produced and consumed internally by a vertically integrated textile and apparel producer or will be sold to a third-party

³³ Clause (iii) refers to a possible later addition to this quantity of fabric available in the next fiscal year should the Commission under section 112(c)(2)(B)(iii) determine that the quantity previously determined to be available in the current fiscal year was not used.

³⁴ Transcript at 10 (Ryberg).

³⁵ Transcript at 10-11 (Ryberg).

³⁶ Transcript at 19 (Han). The projected quantity of 22.2 million SMEs is an unadjusted number; for an explanation of Commission adjustments, see SR, Appendix, Table C.1, note a.

³⁷ Based on the information obtained in this investigation, Commissioner Pinkert determined that the quantity that will be available in fiscal year 2009 will be within a range from 19,054,860 SMEs to 20,515,692 SMEs.

apparel manufacturer, provided that the fabric is made in a beneficiary SSA country and the apparel is manufactured in an LDB SSA country.³⁸

In calculating the quantity that will be available, we considered carefully the data in our record supplied by the four SSA denim fabric companies that indicated they intend to produce denim fabric during fiscal year 2009. We focused in particular on information relating to several possible indicators, including recent production and shipments, markets served and likely to be served, evidence of any pending orders, and company projections.³⁹ In the case of possible new producers, we considered, in addition, information with respect to several other indicators, including the status of the plant and equipment and when it might be available to produce denim fabric, whether the plant was likely to produce denim fabric for apparel destined for the U.S. market, and whether the firm had received any orders from LDB SSA apparel manufacturers that sell to U.S. importers.

The Commission received responses for fiscal year 2007 from *** current beneficiary SSA country producers of denim fabric, ***, on their capacity, inventory, production, and shipments, and received projections for fiscal years 2008 and 2009 from *** firms (***). The data included projections from ***.⁴⁰ The Commission also was advised that a *** company, De-nim, a subsidiary of CGM, had closed its denim mill in South Africa in February 2007 and sold its factory and equipment to producers outside the SSA region.⁴¹

Based on the information in the investigation, we find that there is reasonable certainty that *** of the *** firms, *** will make the subject denim fabric available in commercial quantities during fiscal year 2009 for use in LDB SSA countries in the production of apparel receiving U.S. preferential treatment. There is *** that ***, the other *** that currently *** the subject denim fabric in beneficiary SSA countries, will make the subject denim fabric available for use in LDB SSA countries in the production of apparel for the U.S. market during fiscal year 2009. DDI, a ***. Frame Denim, which produces the subject denim fabric in South Africa, ***.⁴²

RS Denim is owned by the RS Group,⁴³ a producer of denim apparel. ***⁴⁴ ***⁴⁵ RS Denim ***. ***⁴⁶ ***⁴⁷ In May 2008, RS Denim also stated that it was ***⁴⁸ ***⁴⁹ ***.

Nien Hsing is ***. Nien Hsing is a large vertically integrated textile and apparel producer. It produces the subject denim in Lesotho, and uses the subject denim fabric in three related apparel plants,

³⁸ Commissioner Pinkert finds that the term “will be available” refers to the quantity of fabric that is reasonably expected to be available. He explains his analysis, including how he analyzes projections, in more depth in his Separate Views.

³⁹ As indicated in our views in investigation No. AGOA-001, information relating to several possible indicators, such as inventories and future orders, proved to be of only limited use in this case, either because of the nature of denim fabric trade (for example, SSA denim fabric generally is produced in response to a contract and not sold from existing inventories), or because no information was available (for example, although requested by the Commission’s questionnaire, no sales contracts were furnished for fiscal year 2009, perhaps because such contracts average only about 3 months in duration and most contracts known or pending at the time of their responses expired before or just after the start of fiscal year 2009).

⁴⁰ SR-4 and SR-6.

⁴¹ Transcript at 32-34 (Moodley).

⁴² Frame Denim *** SR-9.

⁴³ The RS Group includes RS Fashions Ltd., which has been producing jeans of denim fabrics since 1985. SR-6.

⁴⁴ SR-6.

⁴⁵ Confidential memo to the Commission, ID-FF-024, June 23, 2008.

⁴⁶ SR-9.

⁴⁷ SR-10.

⁴⁸ SR-9 to SR-10.

⁴⁹ ***

also in Lesotho, in the production of denim apparel, such as jeans. Its customers include U.S. importers such as ***.⁵⁰ Nien Hsing also ***.⁵¹

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On the basis of the information before us, we find that the quantity of subject denim fabric that will be available for use in LDB SSA countries during fiscal year 2009 in the production of apparel for the U.S. market is 18,260,400 SMEs. *** We reached this conclusion because we believe that the best information we have regarding the quantity that will be available during fiscal year 2009 is projected shipment data for fiscal year 2008. We also considered statements and information provided by U.S. importers of apparel concerning recent trends in their imports and their plans for fiscal year 2009. Data and information provided by U.S. importers suggest that U.S. imports of apparel made from subject denim fabric and receiving preferential treatment are likely to be relatively unchanged during fiscal year 2009 as compared to fiscal year 2008.⁵³ We also reviewed U.S. Government trade data for U.S. imports of denim apparel, particularly denim apparel from SSA countries. These data show a modest downward trend in U.S. imports during the first 5 months of fiscal year 2008, as compared to the first 5 months of fiscal year 2007.⁵⁴ These data, combined with data and information provided by U.S. importers and recent reports of slower growth in the U.S. economy overall, led us to discount projections of rising sales of subject denim fabric by producers in beneficiary SSA countries to apparel manufacturers in LDB SSA countries for use in the production of apparel destined for the U.S. market between fiscal year 2008 and fiscal year 2009.^{55 56}

IV. FUTURE PROCEEDINGS

Section 112(c) of AGOA provides U.S. duty-free treatment for apparel articles made in LDB SSA countries from third-country fabric (non-U.S. or non-beneficiary SSA country fabric), subject to a cap, but also provides that such duty-free treatment can be removed if beneficiary SSA fabric is determined to be available to make such apparel but is not used. Determinations with respect to availability and use are made by the Commission, and any actions to remove eligibility for apparel made from third-country fabric are taken by the President. In July 2008, the Commission completed investigation No. AGOA-002 and determined, under section 112(c)(2)(B)(iii) of AGOA, that the quantity of beneficiary SSA country subject denim fabric used in apparel receiving U.S. preferential treatment during fiscal year 2007 was 21,120,000 SMEs. This was less than the 30 million SMEs deemed by statute to be available during fiscal year 2007, and resulted in a shortfall of 8,880,000 SMEs. As required by statute, the Commission has added this shortfall to the quantity it earlier determined will be available during fiscal year 2008, 21,303,613 SMEs, bringing the statutorily adjusted total available during fiscal year 2008 to 30,183,613 SMEs.⁵⁷

⁵⁰ SR-18, and transcript at 34 (Han).

⁵¹ SR-7.

⁵² SR, Appendix C, Table C.1

⁵³ SR-20, Table 8; SR-19.

⁵⁴ SR-19, and Table 7.

⁵⁵ Nien Hsing's testimony at the Commission's hearing on April 9, 2008, further supports this conclusion. At the hearing, Nien Hsing, citing declining U.S. denim apparel imports due to the U.S. economic slowdown, said that its orders for subject denim fabric from its African customers had also declined, and indicated that its production of subject denim fabric in Africa during fiscal year 2008 will likely be lower than previously projected. Transcript at 19 (Han). While Nien Hsing declined to revise its fiscal year 2009 forecast, stating that the firm remains "more optimistic" about fiscal year 2009, Nien Hsing appeared to attribute that optimism at least in part to the ability of its sales department to obtain more orders and to increased sales during fiscal year 2009 to markets in Africa and the EU. Transcript at 83 (Han).

⁵⁶ Commissioner Pinkert does not join in this sentence or the related footnote.

⁵⁷ See the Commission's determination in investigation No. AGOA-001 in September 2007.

In the next few months, the Commission will be required to commence an investigation under section 112(c)(2)(B)(iii) of AGOA for the purpose of determining the extent to which subject denim fabric determined to be available during fiscal year 2008 was used in the production of apparel articles receiving U.S. preferential treatment during fiscal year 2008. On the basis of actual data and estimates provided by questionnaire respondents believed to account for all or virtually all production of the subject denim fabric available for use in LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment during fiscal year 2008, it appears at this time that the Commission will determine that the quantity of subject denim fabric actually used for the statutory purpose during fiscal year 2008 will have been substantially less than the statutorily adjusted total quantity available during fiscal year 2008 of 30,183,613 SMEs. Information in the record of this investigation indicates that actual use during fiscal year 2008 will be approximately *** SMEs,⁵⁸ or about *** than the statutorily adjusted amount determined to be available for fiscal year 2008. If this shortfall is confirmed by the Commission in its determination under section 112(c)(2)(B)(iii), the Commission will be required by statute to add this shortfall to the quantity it has determined to be available in fiscal year 2009 in this investigation. This would raise the quantity available in fiscal year 2009 to over *** million SMEs, well above the quantity that the Commission has determined will be shipped by beneficiary SSA denim fabric producers during fiscal year 2009 to LDB SSA for use in apparel for the U.S. market.

V. CONCLUSIONS

For reasons set forth above, we have determined that the subject denim fabric will be available in commercial quantities during fiscal year 2009 for use by lesser developed beneficiary sub-Saharan African countries in the production of apparel articles receiving U.S. preferential treatment, and also have determined that the quantity of such denim fabric that will be so available is 18,260,400 SMEs.

⁵⁸ Data include projected fiscal year 2008 shipments for Nien Hsing and Frame Denim, but do not include shipments projected by RS Denim.

SEPARATE VIEWS OF COMMISSIONER DEAN A. PINKERT

INTRODUCTION AND DETERMINATION

I join my colleagues in finding that the subject denim fabric produced in beneficiary sub-Saharan African (SSA) countries will be available in commercial quantities during October 1, 2008 - September 30, 2009 (fiscal year 2009) for use by lesser developed beneficiary (LDB) SSA countries in the production of apparel articles receiving preferential treatment. I have determined that the quantity of such denim fabric that will be available during fiscal year 2009 is within the range of 19,054,860 square meters equivalent (SMEs) to 20,515,692 SMEs. I write separately to explain my interpretation and application of the statute.

I. STATUTORY INTERPRETATION OF “WILL BE AVAILABLE”

Although I agree with much of the discussion in the Views of the Commission with respect to the determination that the subject denim fabric will be available in commercial quantities during fiscal year 2009, I do not join in the Commission’s interpretation of the statutory term “will be available.”¹ I find, as I did in AGOA-001, that “will be available” indicates that we are to make a determination, with a significant degree of precision, regarding a future circumstance. I thus interpret the statute to mean that we must determine the amount of subject denim fabric that is reasonably expected to be available during the fiscal year in question for use by apparel producers in LDB SSA countries in the production of apparel articles receiving preferential treatment. In applying the statutory standard, I have taken into account projections of future production, sales, and shipments, provided that the projections are based upon a reasonable methodology. Given the many circumstances that could occur between now and the end of fiscal 2009 that may have an impact on fabric producers’ production, sales, and shipments, as well as potential changes in the market for denim fabric, I find that the amount of subject fabric that “will be available” during fiscal year 2009 falls within a range.

II. THE LOW AND HIGH ENDS OF THE RANGE OF SUBJECT DENIM FABRIC THAT WILL BE AVAILABLE IN COMMERCIAL QUANTITIES DURING FISCAL YEAR 2009

I have carefully considered the data supplied by the *** SSA denim fabric companies indicating that they intend to produce denim fabric during fiscal year 2009, and, like my colleagues, I have not included data concerning the fabric produced by *** in my analysis. My determination differs from that of my colleagues in three respects: (1) I have expressed my determination in terms of a range; (2) the high end of my range includes some projected data for fiscal year 2009; and (3) I have relied upon *** projected data for with respect to *** for fiscal year 2008 (though not its projected data for fiscal year 2009).

¹ Section 112(c)(2)(B)(ii) of the African Growth and Opportunity Act (AGOA), as amended (19 U.S.C. 3721(c)(2)(B)(ii)).

A. The Low End of the Range: 19,054,860 SMEs

The low end of my range is based entirely on fiscal year 2008 data. My calculations based on 2008 data for *** result in an amount of *** SMEs.² My calculations based on 2008 data for *** result in an amount of *** SMEs.³ These *** figures add up to my low-end estimate of 19,054,860 SMEs.

***, reported that ***.⁴ As stated in the Views of the Commission, ***. *** provided its projections for fiscal 2008 in late May of 2008, only about four months before the end of FY 2008. It stated that it would ***,⁵ and that it would have total shipments of subject denim of *** million SMEs in fiscal year 2008.⁶

***. ***.⁷ ***. On the other hand, *** has projected that it will be selling its fabrics to apparel manufacturers in *** in fiscal 2009, all of which are LDB SSA countries. Finally, *** has indicated that a *** share of its shipments in fiscal year 2008 *** fabric sold to apparel manufacturers in LDB SSA countries that will receive preferential treatment in the United States.

*** projections for fiscal year 2008 may or may not prove to be accurate by the end of that fiscal year, but I see no reason to disregard them for purposes of my fiscal year 2009 determination. *** the subject denim in significant commercial quantities. *** the subject denim to LDB SSA countries and *** quantity of the denim it produces in fiscal year 2008 will receive preferential treatment. Further, during fiscal year 2009, it is reasonable to expect that *** will be *** and *** able to serve the LDB SSA producers ***.

B. The High End of the Range: 20,515,692 SMEs

I have calculated the high end of my range by adding ***. These *** figures add up to a high-end estimate of 20,515,692 SMEs.

The figure for *** is based upon staff's estimates, which rely upon *** total projected fiscal year 2009 production, prorated based on the share of its 2008 shipments directed to LDB SSA countries in the production of apparel destined for the U.S. market.⁸

I have relied upon *** fiscal year 2008 projections for purposes of determining the high end of my range, just as I have done for purposes of determining the low end of my range. *** has reported that it will be *** and that its annual average production capacity will be *** million SMEs in fiscal year 2009.

*****.¹⁰ ***. Therefore, in determining the high end of my range, notwithstanding *** projections for production capacity in fiscal year 2009, I have relied upon a *** estimate for *** based on fiscal year 2008 data.

² Staff Report (SR) at Table C.1. *** projection is based on customer sales data it provided.

³ SR at Table C.4, Revised FY 2008 projection for ***, as of May 28, 2008.

⁴ SR at SR-9.

⁵ SR at SR-10.

⁶ SR at Table C.4.

⁷ SR at SR-10, n.58.

⁸ SR at Table D.2.

⁹ Commission staff estimated *** 2009 subject denim fabric in the same manner as it did for *** 2009 projection. SR at Table D.2.

¹⁰ SR at SR-10.

Information Obtained in the Investigation

Introduction

This report provides information on the availability of certain denim fabric in lesser developed beneficiary (LDB) sub-Saharan African (SSA) countries during fiscal year 2009.¹ The information was developed as a part of the Commission's investigation required by the African Growth and Opportunity Act (AGOA).²

In this investigation the Commission must determine:

- whether certain denim fabric produced in beneficiary SSA countries will be available in commercial quantities for use in LDB SSA countries during the period October 1, 2008-September 30, 2009 (fiscal year 2009);³ and
- if so, the quantity of such denim fabric that will be so available in that year.⁴

On December 20, 2006, the President signed into law amendments to section 112(c) of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721(c)) that require the Commission to make certain determinations regarding the availability of regional SSA fabric or yarn, and the quantity used in LDB SSA countries in the production of apparel for the U.S. market. The Commission's determinations are part of a "third-country fabric" provision in AGOA that permits apparel produced in LDB SSA countries from third-country fabric or yarn (generally, non-U.S. and non-regional SSA fabric or yarn) to enter the United States free of duty through 2012, subject to an annual cap.⁵ The statute authorizes the President to deny U.S. duty-free treatment to apparel made from third-country fabric or yarn when qualifying regional fabric is found to be available but is not used in the production of such apparel.

Section 112(c)(2)(A)-(B) of AGOA potentially requires the Commission to make three types of determinations:

¹ LDB SSA countries are those lesser developed countries designated as eligible for textile and apparel benefits under the African Growth and Opportunity Act (AGOA). The following countries are beneficiaries: Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Swaziland, Tanzania, Uganda, and Zambia. Note that LDB SSA countries include all of the beneficiary SSA countries except South Africa and Mauritius. 19 U.S.C. 3721(c)(5)(D).

² The denim articles at issue are defined in the statute as "denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule." 19 U.S.C. 3721(c)(2)(C).

³ 19 U.S.C. 3721(c)(5)(A).

⁴ Section 112(c)(2)(B)(ii) of AGOA, as amended (19 U.S.C. 3721(c)(2)(B)(ii)).

⁵ Whereas apparel made of the subject denim fabric enters free of duty under AGOA, the general ad-valorem rates of duty for the subject denim apparel articles range from 8.2 percent for women's skirts to 16.6 percent for women's and men's jeans.

1. in response to a petition filed by an interested party, whether a fabric or yarn produced in beneficiary SSA countries is available in commercial quantities for use by LDB SSA countries, and if so, the quantity that will be available in the following fiscal year (October 1-September 30);
2. if the Commission makes an affirmative determination, then in each year thereafter through 2012, whether such fabric or yarn produced in beneficiary SSA countries will be available in commercial quantities in the following fiscal year for use by LDB SSA countries, and if so, the quantity that will be available; and
3. after the end of each such fiscal year during which a determination is in effect, the extent to which the quantity of fabric or yarn determined to be so available in the preceding year was used in the production of apparel articles that received U.S. preferential treatment under this provision in that fiscal year; to the extent that the quantity determined to be available in the preceding year was not so used, the Commission must add that quantity to the quantity of fabric or yarn determined to be available in the next fiscal year.

This report provides information for the second type of determinations noted above, and is the second such set of determinations that the Commission has been required to make under section 112 (c)(2)(B)(ii) of AGOA. In September 2007, the Commission determined that such denim fabric will be available in commercial quantities during fiscal year 2008 and that the quantity that will be available is 21,303,613 square meters equivalent (SMEs).⁶ The Commission transmitted its report to the President on September 25, 2007 (Commission investigation No. AGOA-07-001, subsequently re-designated as investigation No. AGOA-001, *Commercial Availability of Fabric & Yarns in AGOA Countries: Certain Denim*, Commission Publication 3950, September 2007).

The Commission recently concluded investigation No. AGOA-002 to determine the extent to which the denim fabric deemed to be available during fiscal year 2007 for use in LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment was so used during fiscal year 2007 (investigation No. AGOA-002, *Denim Fabric: Use in AGOA Countries During Fiscal Year 2007*, Commission Publication 4021, July 2008). The Commission determined that 21,120,000 SMEs of the subject denim fabric available for use in LDB SSA countries was used in the production of apparel articles receiving preferential treatment during fiscal year 2007.⁷

In conducting this investigation on the commercial availability of denim fabric in fiscal year 2009, the Commission obtained information from a variety of sources, including questionnaire responses received from SSA producers of the subject denim fabric, LDB SSA manufacturers of apparel made of the subject denim fabric, and U.S. importers of apparel made from the subject denim fabric,⁸ as well as follow-up interviews and e-mail

⁶ USITC, *Commercial Availability of Fabrics & Yarns in AGOA Countries*, 2007, 8.

⁷ Congress, in section 112(c)(2)(C) of AGOA, deemed the subject denim fabric to be available in commercial quantities for use in LDB SSA countries in the amount of 30 million SMEs during fiscal year 2007, as if the Commission had made such a determination.

⁸ Data collected through the importers' and apparel manufacturers' questionnaires were used in both the AGOA-002 and AGOA-003 investigations.

correspondence with selected respondents. The Commission also obtained information from public submissions and information presented at the Commission's public hearing held on April 9, 2008; from site visits to selected SSA denim fabric and apparel producers in Lesotho, Mauritius, South Africa, and Madagascar; and from other publicly available sources. Finally, the Commission used information obtained during the AGOA-001 and AGOA-002 investigations.

The Commission sent questionnaires to five firms confirmed by Commission staff to be producing denim fabric in beneficiary SSA countries in fiscal years 2007 and/or 2008. The denim fabric producers' questionnaire requested data and information on production capacity, production, shipments, inventory, and customers purchasing the subject denim fabric during fiscal years 2007 through 2009. The Commission received questionnaire responses from all five firms. Commission staff used these responses as primary data sources in completing the staff report. Three firms reported actual and projected production for fiscal years 2007 through 2009. One of the firms indicated that it had closed its denim fabric operations during fiscal year 2007. Another firm indicated that it ***.

The Commission sent questionnaires to 30 LDB SSA apparel manufacturers that potentially have exported the subject denim apparel to the United States since October 1, 2006.⁹ The apparel manufacturers' questionnaire asked for data on firms' purchases of the subject denim fabric from beneficiary SSA fabric producers, including the share that such purchases represented of their total denim fabric purchases, and information on factors affecting demand for the subject denim fabric. The Commission received six responses. Four respondents reported they had manufactured apparel using the subject denim fabric, while two additional firms reported that they had not manufactured apparel using the subject denim fabric since October 1, 2006. Commission staff used the affirmative responses to confirm data reported by fabric producers. Together, the four respondents' fabric purchases for apparel for the U.S. market totaled *** million SMEs for fiscal year 2007, equivalent to 93 percent of the denim fabric producers' reported shipments to LDB SSA countries for use in apparel exported to the U.S. market during the same period.

The Commission sent questionnaires to 99 U.S. importers that reported apparel imports from LDB SSA countries since October 1, 2006 under the various Harmonized Tariff Schedule of the United States (HTS) provisions that could include subject denim apparel. The importers' questionnaire requested information and data on the firms' imports of apparel from LDB SSA countries using the subject denim fabric for fiscal years 2007 and 2008, and asked the importers to describe any planned changes in sourcing for fiscal year 2009, including how their sourcing would change if the third-country fabric provision was removed for denim apparel. In addition, the questionnaire requested information on competitive factors of sourcing denim fabric from SSA suppliers compared with non-SSA suppliers. The Commission received responses from 74 U.S. importers. Of these 74,

⁹ Commission staff attempted to send questionnaires via e-mail to a total of 40 firms; however, multiple e-mail messages were returned as undeliverable. Additionally, staff learned from U.S. embassy officials and industry representatives that several firms had closed, merged, or changed names.

Commission staff identified 21 firms that imported the subject denim apparel during fiscal year 2007, and two additional firms in fiscal year 2008.

The Subject Product

The denim fabric that is the subject of this investigation can be of several styles, all of which are woven denim fabric satisfying the criteria in the statute and classified in subheading 5209.42.00 of the HTS.¹⁰ Variations in the fabric result from the use of different types of yarn (i.e., ring-spun versus open-end), weaves, and dyes (box 1).¹¹ A subheading note to chapter 52 of the HTS states, “for the purposes of subheadings 5209.42 and 5211.42, the expression “denim” means fabric of yarns of different colors, of 3-thread or 4-thread twill, including broken twill, warp-faced, the warp yarns of which are of one and the same color and the weft yarns of which are unbleached, bleached, dyed grey shade of the color of the warp yarns.”¹² Denim classified in subheading 5209.42.00 contains 85 percent or more by weight of cotton, and weighs more than 200 grams per square meter, or about 5.9 ounces per square yard.¹³ For the purposes of this investigation, the term “subject denim fabric” is used to refer to such denim that is made in a beneficiary SSA country, regardless of whether for use in an LDB SSA country in the production of apparel for sale in the U.S. market.¹⁴ Apparel articles made in LDB SSA countries of the subject denim fabric consist principally of jeans, shorts, jackets, and skirts. Such apparel items are classified in HTS chapter 62 (apparel, not knitted or crocheted) under HTS subheadings covering apparel of all types of blue denim, along with apparel of most other woven fabrics. For the purposes of this investigation, the term “subject apparel” refers to apparel made in LDB SSA countries that contains the subject denim fabric.

Information Pertaining to Beneficiary SSA Supply of Subject Denim Fabric

Beneficiary SSA Producers of the Subject Denim Fabric

The Commission received questionnaire responses from five denim fabric producers that accounted for all known subject denim fabric production in SSA countries during the period for which data were collected (table 1). Three firms reported actual and projected production of the subject denim fabric in beneficiary SSA countries for fiscal years 2007 through 2009: Nien Hsing Textile Co., Ltd. (Nien Hsing), Frame Denim (Frame), and Denim de L’Île

¹⁰ HTS subheading 5209.42.00 covers blue denim and other denim, containing 85 percent or more by weight of cotton, and weighing more than 200 grams per square meter.

¹¹ For more information on the subject denim fabric, see USITC, *Commercial Availability of Fabric and Yarns in AGOA Countries*, 2007.

¹² Subheading Note 1, chapter 52, Harmonized Tariff Schedule of the United States (2008) (Rev. 2), p. 52- 1.

¹³ A conversion factor of 0.02949 was used to convert the specified weight of 200 grams per square meter to ounces per square yard. For additional background information on the subject denim, see USITC, *Commercial Availability of Fabrics & Yarns in AGOA Countries*, 2007, SR-3–SR-5.

¹⁴ Note that this definition for the subject denim fabric differs from that used in inv. No. AGOA-002. The subject denim in AGOA-002 is further defined as being used by an LDB SSA country in the production of apparel receiving US preferential treatment under AGOA.

BOX 1 Description of Denim Fabrics

Denim is one type of 3-thread or 4-thread twill fabric, including broken twill weave.^a The warp yarns (yarns that run vertically in the construction of a fabric) are a different color from the color of filling yarns (yarns that run horizontally in a woven fabric). The fabric is warp-faced, meaning the warp yarns make up the appearance of the outside of the fabric, and therefore, the color of the warp yarns is the predominant color of the fabric. The filling yarns may be unbleached, bleached, dyed gray, or dyed a lighter shade of color than the warp yarns. Hence, blue denim is blue because the warp yarns are dyed blue. Twill woven fabric is characterized by the appearance of a diagonal line running from the bottom left to the top right of the fabric or vice versa. There are many types of denim fabrics that meet the description above.

Variations of the subject denim are created by varying the shade and type of dye used, the cotton content (e.g., 100 percent cotton versus a blend containing 85 percent or more but less than 100 percent cotton), the type of twill weave, (i.e., a 4-thread versus a 3-thread twill), the size, uniformity, and the types of yarns used, (i.e., an open-end spun yarn versus a more expensive ring-spun yarn).^b The industry commonly describes denim fabrics by their weight, shade or color, and finish, for example, as pre-shrunk, 12-ounce, medium indigo. Denim fabrics may also be referred to as “rigid fabric,” meaning fabric with no stretch, or as “stretch denim,” meaning fabric made with stretch fibers or yarns (e.g., lycra).

Additional variations in the finished appearance of denim apparel are created by finishes or washes applied to the apparel by the manufacturer after the garments are sewn. Four finishing techniques believed to be commonly applied to denim jeans include rinse, stonewash, stonewash with bleach, and stonewash with laccase (a copper-containing enzyme).^c In addition, apparel manufacturers may use various dry applications.^d

^aA 3-thread or 4-thread, warp-faced, twill weave is constructed by two warp yarns (for a 3-thread twill) and three warp yarns (for a 4-thread twill) passing over one filling yarn and progressing by one to the right or the left, thus creating the diagonal line prevalent in denim fabric. A broken twill is a type of twill fabric characterized by a zig-zag effect, such as herringbone, where the diagonal line does not run the entire length of the fabric.

^bJoseph, *Introductory Textile Science*, 222, and 239-243. In open-end spinning, cotton fibers are forced by air suction through a spinning tube where twist is imparted to the fibers. In ring spinning, cotton fibers move through a traveler that moves around a stationary ring. The action of a turning bobbin and the moving traveler impart twist to the yarn. Ring spinning is slower than open-end spinning and produces a smoother yarn. Ring-spun yarns are more expensive than open-end spun yarns.

^cInformation on washes obtained from an industry representative of ***, e-mail message to Commission staff, April 25, 2007.

^dFor example, Jordache reports that its operation in Madagascar (Mklen International) has the capability to apply various types of dry applications including “hand sanding, sand blasting, whiskers, grinding, tacking, destruction and potassium spraying.” Jordache Enterprises, “Manufacturing Summary,” <http://www.jordachecorporate.com/2006/images/global-manufacturing-program2.pdf>.

TABLE 1 Beneficiary SSA producers of the subject denim fabric

Company name	Country located	Established major markets
Nien Hsing Textile Co., Ltd.	Lesotho	Lesotho, Kenya, Madagascar
Denim de l'île Ltd	Mauritius	Mauritius
Frame Denim	South Africa	South Africa
RS Denim Ltd	Mauritius	(^a)
De-nim Textile (Pty) Ltd.	South Africa	(^b)

Source: Statement submitted by Paul Ryberg, The African Coalition for Trade, Inc., U.S. International Trade Commission (USITC) hearing transcript in connection with inv. No. AGOA-003, *Denim Fabric: Commercial Availability In AGOA Countries During Fiscal Year 2009*, April 9, 2008, 32.

^a Not available. According to The African Coalition for Trade, Inc., the information provided on shipments by market are predictions, as RS Denim is a brand new company. USITC hearing transcript, April 9, 2008, 10.

^bFirm closed.

(DDI). A fourth firm, RS Denim, Ltd. (RS Denim), ***.¹⁵ A fifth firm, De-nim Textile (Pty) Ltd.(De-nim), a subsidiary of CGM Group (CGM), reported that it produced the subject denim fabric in South Africa during the first part of fiscal year 2007, but closed, with the last production in February 2007.¹⁶ It reported production of *** million linear yards of denim (about *** million SMEs)¹⁷ in fiscal year 2007 and stated ***.¹⁸ CGM indicated that it sold its denim fabric mill and that most of its equipment has been sold to producers outside of the SSA region.¹⁹ Since De-nim is no longer operational, it is not referred to further in this report.

Nien Hsing Textile Company, Ltd.

Nien Hsing is a large Taiwan-based textile and apparel company with production sites in Taiwan, Nicaragua, Mexico, Cambodia, Vietnam, and Lesotho. Nien Hsing operates one textile mill (Formosa Textiles) and three apparel factories in sub-Saharan Africa in Lesotho. ***²⁰ Nien Hsing reported that it invested \$120 million in its yarn spinning plant, denim mill, and jeans factories in Lesotho,²¹ and that current employment in the Lesotho textile and apparel facilities is ***.²²

Nien Hsing is vertically integrated, from raw cotton through finished apparel. It imports cotton from Benin, Malawi, Mozambique, Tanzania, and Zambia for spinning cotton yarns. It indicated that the African cotton is higher-cost but better-quality cotton than that from the United States, Turkey, or Pakistan.²³ Nien Hsing spins *** yarn, dyes yarn, and weaves the yarn into denim fabric. ***.²⁴

Nien Hsing produces yarn ***.²⁵ ***.²⁶

Nien Hsing is the largest denim fabric producer in the beneficiary SSA countries, accounting for about one-half of total production of the subject denim fabric in all beneficiary SSA countries in fiscal year 2007.²⁷ In fiscal year 2008, Nien Hsing projects it will consume about one-third of its fabric production in Lesotho internally.²⁸ In addition to supplying the subject denim fabric to its three apparel facilities in Lesotho, Nien Hsing also exports the subject denim fabric to unrelated apparel manufacturers in Kenya,²⁹ Madagascar, and Mauritius,³⁰ where it is used in the production of apparel (primarily jeans) for companies such as ***.³¹

¹⁵ ***

¹⁶ CGM stated that it closed the South African denim mill because production was too expensive to be financially viable. USITC hearing transcript, April 9, 2008, 32 and 33.

¹⁷ Assumes an average fabric width of 60 inches.

¹⁸ ***

¹⁹ USITC hearing transcript, April 9, 2008, 34.

²⁰ ***

²¹ USITC hearing transcript, April 9, 2008, 14.

²² ***

²³ USITC hearing transcript, April 9, 2008, 14 and 68.

²⁴ ***

²⁵ ***

²⁶ ***

²⁷ ACT, written submission to the USITC, April 23, 2008; and Nien Hsing Textile Co., written testimony, April 9, 2008.

²⁸ Nien Hsing Textile Co., written testimony, April 9, 2008.

²⁹ ***

³⁰ Nien Hsing Textile Co., written testimony, April 9, 2008.

³¹ Nien Hsing, Sub-Saharan African Producers' Questionnaire, USITC inv. No. AGOA-003, 10, and ***.

Although Nien Hsing primarily sells fabric to apparel manufacturers for the U.S. market, it indicated that it is working to expand to the EU market.³² ***³³

Denim de l'Île, Ltd.

DDI is a vertically integrated denim mill located in Mauritius. It employs *** workers in its fabric and garment facilities.³⁴ ***³⁵ ***³⁶ ***³⁷ ***³⁸ ***³⁹

***⁴⁰ ***⁴¹ DDI recently purchased additional denim apparel manufacturing facilities in Mauritius as it plans to expand its apparel production and exports.⁴² ***⁴³ Sixty-three percent of DDI's total denim fabric production was consumed internally in fiscal year 2007; this share is projected to increase to 72 percent in fiscal year 2008 ***.⁴⁴ The remaining production is sold to other Mauritian apparel firms ***.⁴⁵

***⁴⁶

Frame Denim

Frame, located near Durban, South Africa, is part of the Frame Textile Group that produces a wide assortment of textile products, including yarn, various types of knit and woven fabrics, and home furnishings.⁴⁷ ***⁴⁸ ***⁴⁹ ***⁵⁰ ***⁵¹ ***⁵² Fashion denim fabric has added value through a variety of finishes, as well as different color treatments, yarns, and weave.
***⁵³ ***⁵⁴

³² USITC hearing transcript, April 9, 2008, 75.

³³ ***

³⁴ ***

³⁵ ***

³⁶ ***

³⁷ ***

³⁸ ***

³⁹ ***

⁴⁰ DDI, Sub-Saharan African Producers' Questionnaire, USITC inv. No. AGOA-003, 4.

⁴¹ ***

⁴² Fibre2fashion, "Mauritius: DDI aspires for expansion," February 15, 2008.

⁴³ ***; and DDI, Sub-Saharan African Producers' Questionnaire, USITC inv. No. AGOA-003, 5.

⁴⁴ ACT, written submission to the USITC, April 30, 2008; ***; and DDI, Sub-Saharan African Producers' Questionnaire, USITC inv. No. AGOA-003, 5.

⁴⁵ ACT, written submission to the USITC, April 30, 2008, and ***

⁴⁶ ***

⁴⁷ Frame reportedly produces cotton, polyester, acrylic, and specialty yarns; all types of knit and woven fabrics, including shirting, sheeting, and broadwoven fabrics (including denim); and home furnishing products, including duvets, pillows, comforters, bedspreads, and sheets. Frame Textile Group website, "Overview," <http://www.frame.co.za/divisions/denim/index.php>.

⁴⁸ ***

⁴⁹ Frame, Sub-Saharan African Producers' Questionnaire, USITC inv. No. AGOA-003, 5.

⁵⁰ ***

⁵¹ ***

⁵² ***

⁵³ Frame, Sub-Saharan African Producers' Questionnaire, USITC inv. No. AGOA-003, 4.

⁵⁴ Ibid.

RS Denim, Ltd.

RS Denim, located in Mauritius, is the latest addition to the RS Group, which also includes RS Fashions Ltd., a Mauritian producer of denim jeans since 1985.⁵⁵ ***⁵⁶

***.⁵⁷ RS Denim projects an annual average production capacity of *** million SMEs in fiscal year 2009,⁵⁸ ***.⁵⁹ ***⁶⁰

Production, Capacity, and Shipments of the Subject Denim

Based on the fabric producers' questionnaire responses, SSA production capacity for the subject denim fabric totaled 54.4 million SMEs in fiscal year 2007 (table 2). The producers project production capacity to increase to *** million SMEs in fiscal year 2008. Capacity is projected to increase even further to *** million SMEs in fiscal year 2009, ***.

Based on the fabric producers' questionnaire responses, shipments of the subject denim fabric totaled 49.4 million SMEs in fiscal year 2007, of which *** million SMEs were shipped to LDB SSA countries (including LDB SSA internal consumption) for use in apparel for shipment to the United States (table 3).⁶¹ Projections for fiscal year 2008, *** show total shipments increasing to *** million SMEs, with total projected shipments to the LDB SSA countries for use in apparel for shipment to the United States at *** million SMEs.

All of the fabric producers indicated that production is largely made to order. On average, the fabric mills typically carry *** percent of their annual production in inventory each year.⁶² According to industry sources, the apparel manufacturers also typically do not keep much fabric inventory.⁶³ For example, CGM indicated that it is expensive to maintain a large inventory, so it does not carry more than a one month supply in inventory at a time.

Demand for Denim Fabric in Beneficiary SSA Countries

Factors of Demand

Demand for the subject denim fabric in beneficiary SSA countries is largely driven by demand for different types of denim apparel in the U.S. and EU markets, and prices of that apparel from LDB SSA countries relative to apparel from other sources. U.S. importers

⁵⁵ RS Group website, "RS Group of Companies," <http://www.rsgroupmu.com/index.asp>.

⁵⁶ Unless otherwise noted, information in this paragraph is based on ***.

⁵⁷ ***

⁵⁸ ***

⁵⁹ Nien Hsing, Sub-Saharan African Producers' Questionnaire, USITC inv. No. AGOA-003, 7.

⁶⁰ ***

⁶¹ Note that this figure differs from the amount reported in the AGOA-001 report, which was based on projections. See appendices C and D for additional data on shipments.

⁶² Based on fabric producers' questionnaire responses.

⁶³ In AGOA-001, the Commission found that inventory was not a meaningful indicator of the quantity of denim available for use for the purposes of that investigation. USITC, *Commercial Availability of Fabrics & Yarns in AGOA Countries*, 2007, 7.

TABLE 2 Capacity, production, and capacity utilization for SSA-produced subject denim fabric, fiscal years 2007, 2008, and 2009

Item	Actual FY 2007	Projection FY 2008	Projection FY 2009
Total of all firms:			
Capacity (<i>quantity in SMEs</i>)	54,400,720	***	***
Production (<i>quantity in SMEs</i>)	50,381,718	***	***
Capacity utilization (%)	93	***	***
***.			
Capacity (<i>quantity in SMEs</i>)	***	***	***
Production (<i>quantity in SMEs</i>)	***	***	***
Capacity utilization (%)	***	***	***
***.			
Capacity (<i>quantity in SMEs</i>)	***	***	***
Production (<i>quantity in SMEs</i>)	***	***	***
Capacity utilization (%)	***	***	***
***.			
Capacity (<i>quantity in SMEs</i>)	***	***	***
Production (<i>quantity in SMEs</i>)	***	***	***
Capacity utilization (%)	***	***	***
***.			
Capacity (<i>quantity in SMEs</i>)	(^a)	***	***
Production (<i>quantity in SMEs</i>)	(^a)	***	***
Capacity utilization (%)	(^a)	***	***

Source: Compiled from data collected from foreign producer questionnaire responses.

Note: Data for fiscal year 2007 were reported by the firms based on their actual capacity and production for the period. Data for fiscal years 2008 and 2009 were estimates provided by the firms on their projected capacity and production.

a***

TABLE 3 Summary of key data from fabric producers (*data in SMEs*)

Source	Actual FY 2007	Projected FY 2008
Total of all firms:		
Total shipments	<u>49,432,247</u>	***
Shipments to LDB SSA countries for use in apparel for the U.S. market	***	***
Other	***	***
***.		
Total shipments	<u>***</u>	***
Shipments to LDB SSA countries for use in apparel for the U.S. market	***	***
Other	***	***
***.		
Total shipments	<u>***</u>	***
Shipments to LDB SSA countries for use in apparel for the U.S. market	***	***
Other	***	***
***.		
Total shipments	<u>***</u>	***
Shipments to LDB SSA countries for use in apparel for the U.S. market	***	***
Other	***	***
***.		
Total shipments	<u>***</u>	***
Shipments to LDB SSA countries for use in apparel for the U.S. market	***	***
Other	***	***
***.		
Total shipments	<u>(a)</u>	***
Shipments to LDB SSA countries for use in apparel for the U.S. market	(a)	***
Other	(a)	***

Source: Based on data supplied by U.S. producers' questionnaires.

Note: Data for fiscal year 2007 were reported by the firms based on their actual shipments for the period. Data for fiscal year 2008 were reported by firms based on their projected shipments.

decide from which countries and apparel manufacturers to source the denim apparel and how much to order based on price and characteristics of the apparel. Duty-free access to the U.S. market under AGOA helped to increase exports from beneficiary SSA countries before the phase-out of global textile and apparel quotas at the end of 2004, and to limit the loss of U.S. import market share thereafter (box 2). The average trade-weighted duty on U.S. imports of blue denim apparel from Bangladesh and Vietnam, major competitors to LDB SSA apparel suppliers, was about 17 percent ad valorem in 2007.

BOX 2 AGOA and the SSA Apparel Industry

AGOA, signed into law in May 2000, offered SSA apparel manufacturers duty-free, quota-free access to the U.S. market. Furthermore, LDB SSA apparel producers exporting to the U.S. market received special rule of origin preferences, which allowed them to use third-country fabric in apparel for the U.S. market, while remaining eligible for duty-free treatment.^a Total U.S. imports of apparel from SSA increased over 236 percent since enactment of AGOA in 2000, reaching \$1.2 billion in 2007. With increased exports of apparel to the United States, SSA's demand for imported textile inputs also increased significantly.^b According to industry sources and trade data, Hong Kong, Taiwan, China, Indonesia, Pakistan, and India are the largest third-country suppliers of denim to the SSA apparel industry.

Since the phase-out of global textile and apparel quotas at the end of 2004, total U.S. imports of apparel from SSA decreased by roughly 17 percent.^c According to Nien Hsing, this decline is likely due to increased competition from China and other Asian suppliers and has resulted in the closure of dozens of apparel factories in LDB SSA countries.^d

^aAfrican Growth and Opportunity Act (19 U.S.C. 3701). For further information on AGOA and subsequent amendments, see http://www.agoa.gov/agoa_legislation/agoa_legislation.html.

^b*Textile Outlook International*, November-December 2007, p. 60.

^cUSITC, Dataweb.

^dUSITC hearing transcript, April 9, 2008, 15.

Without this duty-free eligibility under AGOA, many U.S. importers claim that they would move their sourcing out of SSA, because it would not be cost-effective to source denim apparel from the region (see related discussion below on “Role of Third-Country Fabric”).

Income levels also affect general demand for the subject apparel. Some denim apparel manufacturers in beneficiary SSA countries reported lower than expected orders from U.S. importers, which they attributed to slower growth in the U.S. economy. U.S. global imports of all apparel declined by 4 percent in value and 3 percent in quantity during the first four months of 2008, compared with the same period in 2007.⁶⁴ Acknowledging the decline in total U.S. apparel imports, Nien Hsing indicated that orders from its African apparel customers had also declined, and as a result, it had reduced its forecast for shipments of the subject denim fabrics for fiscal year 2008.⁶⁵ Similarly, an apparel manufacturer in Madagascar ***, indicated that it had been warned by its U.S. customers of potentially fewer orders due to decreased demand for garments in the U.S. market.⁶⁶

U.S. importers directly influence the choice of fabrics used in the denim apparel they source from the SSA countries.⁶⁷ Two-thirds of the 21 respondents to the importers' questionnaire indicated that they specified the type of denim to be used in their apparel imports, while about one-third of the respondents also said that they directly control the sourcing of the denim fabric used in the production of apparel they import.⁶⁸ According to apparel manufacturers involved in fabric selection, styles are presented to importers for selection using an assortment

⁶⁴ OTEXA, Major Shippers Report.

⁶⁵ Chia-Liang Han, Nien Hsing Textile Co., USITC hearing transcript, April 9, 2008.

⁶⁶ ***

⁶⁷ Unless otherwise noted, this section draws on qualitative information provided in the 21 U.S. importers' questionnaire responses from firms that indicated they were importing the subject apparel, and 8 respondents that were not importing the subject apparel, but, rather imported denim apparel from the region using third-country fabric. The respondents importing denim apparel made with third-country fabric were not required to complete the full questionnaire.

⁶⁸ Based on U.S. Importers' Questionnaire responses, USITC inv. Nos. AGOA-002 and AGOA-003, 6.

of regional and third-country fabrics.⁶⁹ Once presented with the various styles, the importer will select a particular fabric to be used in the production of the apparel article.

U.S. importers and SSA apparel manufacturers identified several factors that are key in their sourcing decisions for the subject denim fabric, including cost and variety (in terms of weight, finishes, quality, and color). They said that factors such as quantities available and lead time for delivery to LDB SSA countries also influence fabric sourcing decisions, but to a lesser extent. About one-half of the 21 respondents to the importers' questionnaire indicated that price affects their fabric sourcing decisions. One respondent indicated that SSA-produced denim can be competitively priced vis-à-vis third-country suppliers, but most of the respondents indicated that SSA-produced denim costs more than fabric sourced from third-country suppliers, even accounting for the added transportation costs.⁷⁰ ***⁷¹

Approximately one-half of the importer respondents indicated that fabric type, finish, and style affect their decision whether or not to source the fabric from beneficiary SSA producers. Levi Strauss & Co. (LS&CO) stated that fabric weight is an important criteria for its design.⁷² ***⁷³ Other importers, such as ***, indicated that fabric producers in beneficiary SSA countries cannot supply the variety of fabrics required by garment buyers,⁷⁴ and *** stated that SSA fabrics ***.⁷⁵ Similarly, CGM, an LDB SSA apparel manufacturer, stated that the local denim mills do not produce the variety of denim required by its clients and, furthermore, the vertically integrated firms are not flexible in their product offerings.⁷⁶

A number of respondents to the importers' questionnaire stated that transportation times and quantities of fabric available for purchase were factors in their apparel sourcing decisions. ***⁷⁷ ***⁷⁸ and ***.⁷⁹ ***⁸⁰ ***.⁸¹ ***⁸² ***⁸³

Finally, factors affecting the local SSA apparel industry may also affect demand for regional fabrics. In particular, the recent political unrest in Kenya reportedly hurt the local apparel industry.⁸⁴ According to the U.S. Embassy in Kenya, political violence has disrupted supply chains in the apparel sector and has prevented workers from reaching the work sites.⁸⁵ In light of the violence, many U.S. importers reportedly have canceled orders, which led to the closure of several factories.⁸⁶ However, Kenya Trading EPZ, Ltd. (Kenya Trading), ***, is apparently

⁶⁹ USITC hearing transcript, April 9, 2008, 38-39.

⁷⁰ ***

⁷¹ ***

⁷² LS&CO, written submission to the USITC, April 2, 2008.

⁷³ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 8.

⁷⁴ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 8, ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 8.

⁷⁵ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 8.

⁷⁶ USITC hearing transcript, April 9, 2008, 21.

⁷⁷ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 8.

⁷⁸ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 8.

⁷⁹ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 8.

⁸⁰ ***, Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 6.

⁸¹ ***

⁸² ***

⁸³ ***, Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 7.

⁸⁴ U.S. Department of State, U.S. Embassy, Nairobi, Kenya, "Hanging By a Thin Thread-Kenya's Apparel Industry Shrinking in the Wake of Post-Election Violence," May 2, 2008.

⁸⁵ Ibid.

⁸⁶ Ibid.

doing well and is subcontracting to other firms.⁸⁷ The Kenyan industry is reportedly also affected by the U.S. economic slowdown.⁸⁸

Purchasers of the Subject Denim Fabric by Apparel Manufacturers in LDB SSA Countries

The Commission sent questionnaires to 30 apparel manufacturers in LDB SSA countries and it received six responses. Two firms, ***, reported that they had not manufactured apparel from the subject denim fabric. The other four respondents, Nien Hsing Textile Co., Ltd., CGM Group, ***, and *** reported they had manufactured apparel using the subject denim fabric. Together, their fabric purchases totaled *** million SMEs for fiscal year 2007, equivalent to 93 percent of the denim fabric producers’ reported shipments to LDB SSA countries for use in apparel exported to the U.S. market (tables 4 and 5). In fiscal year 2007, the subject denim fabric represented approximately 34 percent of the four firms’ total purchases of denim fabrics, including third-country fabrics (table 6). Both Nien Hsing and

TABLE 4 Summary of data from LDB SSA apparel manufacturers' questionnaire responses: Denim purchased from firms located in beneficiary SSA countries (SMEs)

Item	Actual FY 2007	Projected FY 2008
Total purchases of the subject denim fabric produced in beneficiary SSA countries to make apparel for:		
U.S. market	***	***
EU market	***	***
Internal and other markets	***	***
Total	***	***
Amount of 3 rd country fabric purchases for U.S. market (estimated)	***	***
Total SSA denim fabric purchases (estimated)	***	***

Source: Based on Apparel Manufacturers' Questionnaire responses on purchases of the subject denim fabric received from 4 firms.

⁸⁷ Ibid.

⁸⁸ Ibid.

TABLE 5 Actual and projected purchases of the subject denim fabric for use in apparel for the U.S. market, as reported by the apparel manufacturers (SMEs)

Company	FY 2007	FY 2008	FY 2009
***	***	***	***
***	***	***	(^a)
***	***	***	***
***	***	***	***
Total	***	***	***

Source: Data compiled by Commission staff based on Apparel Manufacturers' questionnaire responses.

TABLE 6 Share of the subject denim of total denim purchases from firms located in SSA beneficiary countries (%)

Firm	FY 2007	FY 2008
***	***	***
***	***	***
***	***	***
***	***	***
Average	34.2	27.6

Source: Data compiled by Commission staff based on apparel manufacturers' questionnaire responses.

CGM indicated they plan to diversify their denim apparel sales to the European market in fiscal year 2009.⁸⁹ Additional information on selected apparel manufacturer respondents is presented below.

CGM Group

CGM employs ***⁹⁰ workers at three apparel factories in Lesotho making denim jeans for the U.S. market: CGM Industrial Ltd., United Clothing, Ltd., and Presitex Enterprises, Ltd. Recently, CGM closed one of its apparel factories in Lesotho due to decreased orders, though it stated that it plans to reopen this facility in the near future.⁹¹ ***⁹² CGM indicated that it plans to source *** percent of total fiscal year 2008 denim purchases from regional suppliers, *** percent in fiscal year 2007.⁹³ CGM manufactures denim jeans with fabric largely selected by its buyers. CGM uses mostly third-country fabric,⁹⁴ although it recently purchased denim fabric from Frame for a new apparel program (see discussion under Frame above).⁹⁵ ***⁹⁶ ***⁹⁷

⁸⁹ USITC hearing transcript, April 9, 2008, 82 and 83.

⁹⁰ ***

⁹¹ USITC hearing transcript, April 9, 2008, 70.

⁹² ***

⁹³ CGM Group, Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 5.

⁹⁴ USITC hearing transcript, April 9, 2008, 20.

⁹⁵ USITC hearing transcript, April 9, 2008, 40.

⁹⁶ CGM Group, Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 6.

⁹⁷ ***

***⁹⁸ ***⁹⁹ ***¹⁰⁰ ***¹⁰¹

***¹⁰² ***¹⁰³ ***¹⁰⁴ ***¹⁰⁵

Nien Hsing

Nien Hsing operates three apparel factories in Lesotho in addition to its denim mill: C&Y Garment Company, Ltd.; Global Garment; and Nien Hsing International Lesotho, Ltd. These apparel factories sell to U.S. importers such as ***.¹⁰⁶ In its apparel manufacturers' questionnaire response, Nien Hsing indicated that ***.¹⁰⁷ Nien Hsing's Lesotho apparel firms use both regional and third-country denim,¹⁰⁸ and in fiscal year 2008, they will source *** percent of total denim fabric regionally.¹⁰⁹ ***¹¹⁰

U.S. Imports of Denim Apparel From LDB SSA Suppliers

The most recent publically available trade data show that U.S. imports of blue denim apparel¹¹¹ (including, but not limited to, the subject denim apparel) decreased from both LDB SSA suppliers¹¹² and the world. U.S. imports of blue denim apparel from LDB SSA countries declined by 18 percent in terms of value (table 7) and by 19 percent in terms of quantity during January through May 2008, compared with the same period in 2007.¹¹³ Similarly, the value of U.S. imports of blue denim apparel from the world declined by 7 percent in January through May 2008, compared with the same period in 2007.

⁹⁸ *** , Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 6.

⁹⁹ ***

¹⁰⁰ *** , Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 6.

¹⁰¹ ***

¹⁰² ***

¹⁰³ *** , Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 6.

¹⁰⁴ ***

¹⁰⁵ ***

¹⁰⁶ *** and USITC hearing transcript, April 9, 2008, 13. ***

¹⁰⁷ Nien Hsing Textile Co., Ltd., Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 4.

¹⁰⁸ USITC hearing transcript, April 9, 2008, 31.

¹⁰⁹ Nien Hsing Textile Co., Ltd., Apparel Manufacturers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 5.

¹¹⁰ ***

¹¹¹ Trade data include HTS statistical reporting numbers 6201.92.2031, 6201.92.2041, 6203.32.2030, 6203.42.4011, 6203.42.4031, 6203.42.4036, 6204.52.2030, 6204.52.2040, 6204.62.4011, 6204.62.4036, and 6204.62.4041, or woven apparel specifically designated as "blue denim." These HTS statistical reporting numbers do not account for all U.S. imports of denim apparel from LDB SSA countries, since the data do not account for U.S. imports of denim apparel of colors other than blue.

¹¹² These data include U.S. imports of blue denim apparel made from both third-country fabric and the subject denim fabric.

¹¹³ See appendix E for additional data on monthly U.S. imports of blue denim apparel from all SSA suppliers, by value.

TABLE 7 U.S. imports of apparel of blue denim from LDB SSA countries and world, calendar year 2007, and January through May year-to-date 2007 and 2008 (actual U.S. \$)

Source	2007	2007 YTD	2008 YTD
LDB SSA	193,076,121	61,151,764	50,388,158
World	4,039,496,703	1,341,767,814	1,245,374,004

Source: USITC Dataweb.

Based on questionnaire responses and follow-up consultation, Commission staff identified 21 firms that imported the subject apparel from LDB SSA countries in fiscal year 2007; two additional firms imported the subject apparel in 2008.¹¹⁴ Based on projections provided by 19 respondents (table 8), it appears that imports of the subject apparel by these firms may decrease in fiscal year 2008 from the fiscal year 2007 level.¹¹⁵ For fiscal year 2009, the outlook is less certain for these firms overall, though it appears any changes from the projected levels for fiscal year 2008 would likely be small.

While specific data are not available on imports of all denim apparel made with the subject denim fabric, or even all types of denim fabric, available data suggest that Lesotho, Madagascar, Kenya, and Swaziland have significant denim apparel exports to the U.S. market (table 9). Trade data also indicate smaller levels of production located in Malawi, Botswana, and Sierra Leone. However, based on shipments data supplied by SSA producers of the subject denim fabric and questionnaire responses from U.S. importers of the subject apparel, it appears that denim apparel made with the subject denim fabric is currently being made in and imported primarily from three LDB SSA countries: Lesotho, Madagascar, and Kenya. Thus, it appears that imports from the other LDB SSA suppliers, including Swaziland, Malawi, Botswana, and Sierra Leone, consisted of apparel that either uses third-country fabrics or fabrics other than the denim classified in HTS 5209.42.00. A representative from the African Coalition for Trade, Inc. indicated that if the countries are not located in relative proximity to southern Africa, then they likely import denim from suppliers other than those located in SSA countries.¹¹⁶ Furthermore, when questioned on the potential impact of the commercial availability provisions on Sierra Leone, the representative indicated that “if the LDCs lose duty-free eligibility for garments made with third-country denim, then the little bit of trade that has developed there probably wouldn’t survive.”¹¹⁷

Role of Third-Country Fabric

U.S. importers were asked to describe the effect on their sourcing if they were no longer eligible to import denim apparel made of third-country fabrics of HTS 5209.42.00 duty-free.

A sampling of U.S. firms importing the subject apparel suggests that the firms mostly use third-country fabric in their apparel imports from the region, supplemented by the subject denim fabric produced in the region. Of the 13 respondents who indicated that they planned

¹¹⁴ Three of the 21 firms reported importing seconds, and thus, had little information on projected imports for fiscal years 2008 or 2009.

¹¹⁵ For additional information on the importers’ questionnaire responses and data reliability, see *Investigation No. AGOA-002, Denim Fabric: Use in AGOA Countries During Fiscal Year 2007, Commission Publication 4021, July 2008.*

¹¹⁶ USITC hearing transcript, April 9, 2008, 98.

¹¹⁷ USITC hearing transcript, April 9, 2008, 99.

TABLE 8 Reported and estimated imports of apparel made with the subject denim fabric by selected importers, quantity (1,000 SMEs)

Firm	Actual fiscal year 2007	Projection	
		Fiscal year 2008	Fiscal year 2009
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***a	***	***	***
***	***	***	***
***	***	***	***
Sub-total	***	***	***
Other ^b	***	(^c)	(^c)
Total	***	(^c)	(^c)

Source: Data compiled by Commission staff based on U.S. importers' questionnaire responses and ***. Data for fiscal year 2009 are estimated by Commission staff based on information provided in the importers' and apparel manufacturers' questionnaire responses.

Note: Figures might not add to totals shown because of rounding. Data for fiscal year 2009 estimated by Commission staff, based on information provided by questionnaire respondents on their planned changes in sourcing for fiscal year 2009.

a***
b***

^cProjections are not available for fiscal years 2008 and 2009.

TABLE 9 U.S. imports of apparel of blue denim from LDB SSA countries, calendar years 2003–07 (*actual U.S. \$*)

Country	2003	2004	2005	2006	2007
Lesotho	284,568	753,519	92,911	59,551,348	89,201,024
Madagascar	76,463	94,195	169,270	38,260,992	49,058,524
Kenya	370,264	215,503	229,831	35,722,491	34,783,140
Swaziland	11,102	0	0	13,122,639	16,422,701
Malawi	181,517	0	0	2,576,948	3,345,644
Botswana	8,125	0	0	1,457,835	161,465
Sierra Leone	0	0	0	0	103,623
Ghana	0	2,210	0	0	0
Nigeria	0	0	0	0	0
Senegal	0	0	0	1,750	0
Total	932,039	1,065,427	492,012	150,694,003	193,076,121

Source: USITC Dataweb.

Note: Trade data includes HTS statistical reporting numbers 6201.92.2031, 6201.92.2041, 6203.32.2030, 6203.42.4011, 6203.42.4031, 6203.42.4036, 6204.52.2030, 6204.52.2040, 6204.62.4011, 6204.62.4036, and 6204.62.4041, or woven apparel specifically designated as 'blue denim.' These HTS statistical reporting numbers do not account for all U.S. imports of denim apparel from LDB SSA countries since the data do not account for U.S. imports of denim apparel made of colors other than blue.

to continue sourcing denim apparel from the region in fiscal year 2009, six indicated that they would move production out of the region if they could no longer import denim apparel made with third-country fabrics free of duty. Another two respondents indicated that they would evaluate their options of staying or leaving the region, depending on costs, and two additional firms indicated their costs would increase. Only one firm, ***, stated that it would stay in the region.¹¹⁸ ***,¹¹⁹ ***,¹²⁰

According to Nien Hsing, the concern that jeans made in LDB SSA countries with third-country denim could lose their duty-free eligibility reportedly has caused some U.S. importers to reduce or suspend their orders from the region.¹²¹ Furthermore, according to CGM, removal of orders from the region is particularly worrisome for regional apparel manufacturers, because once importers leave or close regional offices, it is reportedly difficult to persuade them to return to SSA.¹²²

¹¹⁸ The remaining respondents did not answer this question.

¹¹⁹ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 7.

¹²⁰ ***, U.S. Importers' Questionnaire, USITC inv. Nos. AGOA-002 and AGOA-003, 6-7, and ***.

¹²¹ USITC hearing transcript, April 9, 2008, 17.

¹²² USITC hearing transcript, April 9, 2008, 87.

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APPENDIX A
***Federal Register* Notice**

the subject ID granting InterDigital's motion, finding that there was good cause to amend the complaint and notice of investigation. No petitions for review were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(c) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(c).

By order of the Commission.

Issued: December 6, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-24014 Filed 12-11-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AGOA-003]

Denim Fabric: Commercial Availability in AGOA Countries During Fiscal Year 2009

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Pursuant to section 112(c)(2)(B)(ii) of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721(c)(2)(B)(ii)), the Commission has instituted investigation No. AGOA-003, *Denim Fabric: Commercial Availability in AGOA Countries During Fiscal Year 2009*, for the purpose of gathering information and making the determinations required concerning whether certain denim fabric will be available in commercial quantities during fiscal year 2009 for use by lesser developed beneficiary (LDB) sub-Saharan African (SSA) countries in the production of apparel articles receiving preferential treatment under AGOA, and if so, the quantity that will be available.

DATES: December 5, 2007: Institution of investigation.

March 18, 2008: Deadline for filing request to appear at the public hearing.

March 21, 2008: Deadline for filing pre-hearing briefs and statements.

April 9, 2008: Public hearing.

April 23, 2008: Deadline for filing post-hearing briefs and statements.

April 28, 2008: Deadline for filing all other written submissions.

August 1, 2008: Transmittal of Commission report to the President and U.S. Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing

rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>.

FOR FURTHER INFORMATION CONTACT:

Project leader Kimberlie Freund (202-708-5402 or kimberlie.freund@usitc.gov) or deputy project leader Andrea Boron (202-205-3433 or andrea.boron@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Background: On December 20, 2006, the President signed into law amendments to section 112 of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721), included in Public Law 109-432. Section 112(c)(2)(A)-(B)(i) of the amended statute requires the Commission to determine, following receipt of a petition, whether regional SSA fabric or yarn is available in commercial quantities for use in LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment, and, if so, the quantity of fabric or yarn that will be so available in the following fiscal year (October 1-September 30). Once a fabric or yarn has been determined to be so available, section 112(c)(2)(B)(ii) of AGOA requires the Commission, in each subsequent year through fiscal year 2012, to determine whether such fabric or yarn will be so available in the following fiscal year, and if so, the quantity that will be available in that following fiscal year.

Section 112(c)(2)(C) of AGOA deemed denim articles provided for in

subheading 5209.42.00 of the Harmonized Tariff Schedule of the United States to be available in commercial quantities in the amount of 30 million square meter equivalents during the period October 1, 2006-September 30, 2007 (fiscal year 2007) as if a petition had been filed and the Commission had made an affirmative determination and determined such denim fabric to be available in that quantity. In September 2007, the Commission determined, pursuant to section 112(c)(2)(B)(ii), that such denim fabric will be available in commercial quantities during fiscal year 2008, and will be available in the amount of 21,303,613 square meter equivalents. The Commission transmitted its determination and report in that investigation to the President on September 25, 2007 (Commission investigation No. AGOA-07-001, now re-designated as investigation No. AGOA-001, *Commercial Availability of Fabric & Yarns in AGOA Countries: Certain Denim*, Commission Publication 3950, September 2007).

The Commission is required, before the end of fiscal year 2008, to make determinations concerning whether certain denim fabric will be so available during fiscal year 2009 and, if so, the quantity that will be available. The Commission has instituted investigation No. AGOA-003 for the purpose of gathering the information necessary to make these determinations. The Commission expects to transmit its determinations and report in this investigation to the President and the U.S. Trade Representative on or before August 1, 2008.

It should be noted that the Commission is currently conducting a separate investigation, investigation No. AGOA-002, to determine the extent to which the denim fabric deemed to be available during fiscal year 2007 for use in LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment was so used. As indicated below, the Commission will hold a consolidated public hearing for both investigations.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW, Washington, DC, beginning at 9:30 a.m. on April 9, 2008. To facilitate attendance at the hearing by parties also interested in attending the hearing in investigation No. AGOA-002, the Commission will hold a consolidated hearing for both investigations. Requests to appear at the public hearing should be filed with the Secretary not later than 5:15 p.m., March 18, 2008, in

accordance with the requirements in the "Submissions" section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., March 21, 2008; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., April 23, 2008. In the event that, as of the close of business on March 18, 2008, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202-205-2000) after March 18, 2008, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary. All written submissions (except for requests to appear at the hearing and pre- and post-hearing briefs and statements with earlier due dates) should be received not later than 5:15 p.m., April 28, 2008. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for

confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the President and the U.S. Trade Representative. After transmitting its report, the Commission intends to publish a public version of its report, with any confidential business information deleted. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in the public version of the report in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: December 6, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-24017 Filed 12-11-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-619]

In the Matter of: Certain Flash Memory Controllers, Drives, Memory Cards, and Media Players and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 24, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SanDisk Corporation of Milpitas, California. A supplement to the complaint was filed on November 7, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory controllers, drives, memory cards, and media players and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,426,893, 6,763,424, 5,719,808, 6,947,332, and 7,137,011. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-3052.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 4, 2007, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash memory controllers, drives, memory cards, and media players and products containing same by reason of infringement of one or more of claims 12-14, 17, 25, 27, 30, 36, 37, 39, 41, and 58 of U.S. Patent No. 6,426,893; claims 17, 18, 24, and 30 of U.S. Patent No. 6,763,424; claims 11, 14-17, 20, and 21 of U.S. Patent No. 5,719,808; claims 5 and 10 of U.S. Patent No. 6,947,332; and claim 8 of U.S. Patent No. 7,137,011, and whether an industry in the United States exists

APPENDIX B
List of Hearing Participants

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subjects: Denim Fabric: Use in AGOA Countries During Fiscal Year 2007
Denim Fabric: Commercial Availability in AGOA Countries During Fiscal Year 2009

Inv. Nos.: AGOA-002 & AGOA-003

Date and Time: April 9, 2008 - 9:30 a.m.

Session were held in connection with this investigation in the Main Hearing Room, (room 101), 500 E Street, S.W., Washington, D.C.

ORGANIZATION AND WITNESS

African Coalition for Trade, Inc.
Washington, D.C.

Paul Ryberg, President

Nien Hsing Textile Co., Ltd.
Taipei, Taiwan

Chia-Liang Han, Assistant Vice President

CGM Group
Maseru, Lesotho

Krishna Moodley, Group Production Director

-END-

APPENDIX C

Subject Denim Fabric: Production Capacity, Production, and Shipments

TABLE C.1

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TABLE C-2

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TABLE C.3

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TABLE C.4

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APPENDIX D

Subject Denim Fabric: Production Capacity, Production, and Shipments

TABLE D.1

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TABLE D.2

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TABLE D.3

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APPENDIX E

U.S. Imports of Apparel of Blue Denim from SSA Countries

TABLE E.1 U.S. imports of apparel of blue denim from SSA countries,^a monthly data for 2007 and year-to-date 2008 (actual \$)

Year	January	February	March	April	May	June	July	August	September	October	November	December
2007	14,795,618	11,169,773	13,578,791	11,396,555	16,483,758	21,962,916	23,889,457	22,752,342	20,216,921	22,079,596	15,185,515	12,557,697
2008	10,838,513	7,779,203	9,089,779	8,494,954	19,497,992							

Source: USITC Dataweb.

^a SSA countries include LDB SSA countries as well as non-LDB SSA countries Mauritania, Mauritius, and South Africa, thus totals are higher than data presented in staff report table 9.

