

United States International Trade Commission

19 CFR Part 208 – Investigations Relating to Commercial Availability
Under the African Growth and Opportunity Act

AGENCY: United States International Trade Commission

ACTION: Interim rules with request for comments

SUMMARY: The Commission is amending its rules of practice and procedure to add a new part 208 in order to implement section 112(c) of the African Growth and Opportunity Act (AGOA), as amended (19 U.S.C. § 3721(c)). The provisions addressing the Commission's role are contained in amendments to AGOA which the President signed into law on December 20, 2006. The interim rules provide for Commission investigations, determinations, and reports under section 112(c) of AGOA, and also specify the information that must be included in a properly filed petition. Interim rules are necessary because the new provisions became effective on the day of enactment; in the absence of interim rules, the Commission will have no procedures in place with respect to these proceedings.

DATES: These interim rules are effective on the date on which they are published in the Federal Register. Comments concerning these interim rules should be submitted not later than [insert date 60 days after publication in the Federal Register].

ADDRESSES: You may submit comments, identified by docket number MISC-023 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site:* <http://www.usitc.gov> Follow the instructions for submitting comments. See <http://www.usitc.gov/secretary/edis.htm>.
- *Mail:* For paper submission. U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.
- *Hand Delivery/Courier:* U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

For detailed instructions on submitting comments, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: William Gearhart, Esq., Senior Counsel, Office of the General Counsel, 202-205-3091 (email: william.gearhart@usitc.gov); or Marilyn R. Abbott, Secretary to the Commission, 202-205-2000 (email: marilyn.r.abbott@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired persons are advised that information on this interim rulemaking can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION:

Public Participation

Instructions: All submissions received must include the agency name and docket number (MISC-023) for this rulemaking. All comments received will be posted without change to <http://www.usitc.gov>, including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed

rulemaking, should be submitted to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Comments, along with a cover letter, may be submitted electronically to the extent provided by section 201.8 of the Commission's rules. This rule may refer commenters to the Handbook for Electronic Filing Procedures (see <http://www.usitc.gov/secretary/edis.htm>). For those submitting comments by mail, it is advisable to mail comments in advance of the due date since Commission mail will be delayed due to necessary security screening.

Docket: For access to the docket to read comments received, go to <http://www.usitc.gov> or U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. The preamble below is designed to assist readers in understanding these proposed amendments to the Commission's rules. The preamble includes a discussion of the background leading up to these proposed amendments, a regulatory analysis addressing government-wide statutes and issuances on rulemaking, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment – in addition to any other comments they wish to make on the proposed amendments – on whether the proposed language is sufficiently clear for users of the rules to understand.

If the Commission decides to proceed to final rulemaking after reviewing the comments filed in response to this notice, the final rule revisions will be promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553).

Background

The interim rules establish a new part 208 of 19 CFR to provide for Commission investigations, determinations, and reports under section 112(c) of the African Growth and Opportunity Act (19 U.S.C. 3721(c)) (AGOA). The Commission's general authority to issue rules is set out in 19 U.S.C. 1335. On December 20, 2006, the President signed H.R. 6111 into law (Public Law 109-432), which amends section 112 of AGOA. Newly amended section 112(c) provides for Commission investigations and determinations concerning (1) whether a fabric or yarn produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser developed beneficiary sub-Saharan African countries, and if so, (2) the quantity of the fabric or yarn that will be so available in lesser developed beneficiary sub-Saharan African countries in the applicable 1-year period (October 1-September 30) after the determination is made. Section 112(c) further provides, when the Commission makes an affirmative determination, for additional Commission determinations during and after the applicable 1-year period.

Because the new provisions became effective on the date of enactment, the Commission did not have sufficient time to issue a notice of proposed rulemaking. These interim rules are necessary because the Commission must conduct an investigation upon receipt of an appropriate petition, and in the absence of interim rules the public will have no guidance with respect to how the Commission intends to conduct its investigations and make determinations. The interim rules cover petitions for an investigation, Commission investigations in response to a petition, and the determinations described in (1) and (2), above, that the Commission must make.

The interim rules identify the types of entities that may file a petition and describe the information that

must be included in a petition; provide for Commission investigations and establish procedures for conducting such investigations, including with respect to confidential business information; and describe the determinations and reports that the Commission will make and their content and timing.

Regulatory Analysis of Interim Rules in 19 CFR Part 208

The Commission has determined that the interim rules do not meet the criteria described in Section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. These interim regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These interim rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) because the interim rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The interim rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The interim rules are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), since they do not contain any new information collection requirements.

Explanation of the interim rules in 19 CFR Part 208

The Commission proposes to add part 208 in the manner described below.

Section 208.1

Section 208.1 of new part 208 states that this part 208 applies to functions and duties of the Commission under section 112(c) of AGOA, as amended.

Section 208.2

Section 208.2 sets forth definitions applicable to part 208, including with respect to the terms beneficiary sub-Saharan African country, lesser developed beneficiary sub-Saharan African countries, and applicable 1-year period.

Section 208.3

Section 208.3 identifies the persons who may file a petition with the Commission under section 112(c) of AGOA, and lists the types of information that must be included in the petition.

Section 208.4

Section 208.4 states that the Commission will institute an investigation not later than 10 days after receiving a properly filed petition, describes the information that the Commission will include in the Federal Register notice announcing the investigation, and states that the Commission will make the petition available for public inspection (with the exception of confidential business information).

Section 208.5

Section 208.5 states that the Commission may, in its discretion, hold a public hearing, provide reasonable notice of any hearing, and afford interested parties the opportunity to be present, present evidence, and be heard at any such hearing.

Section 208.6

Section 208.6 describes Commission procedures concerning the filing and service of documents and the required certification required by any person submitting factual information.

Section 208.7

Section 208.7 states that the Commission will, if necessary, make its determinations on the basis of the facts available; will make its determinations by September 25, 2007, with respect to petitions received on or before March 28 and accepted on or before April 11, 2007, and will make its determinations by August 1 of subsequent years with respect to petitions received on or before January 15 and accepted on or before February 1 of those years; will include in its report to the President its determination(s) and an explanation thereof, and any dissenting or separate views of Commissioners; and will make public the report it sends to the President (with the exception of confidential business information).

Section 208.8

Section 208.8 sets forth Commission policy under part 208 with respect to nondisclosure of confidential business information, and also generally requires that persons submitting confidential business information provide the Commission with a non-confidential summary of such information.

List of Subjects in 19 CFR Part 208

Administration practice and procedure, Business and industry, Customs duties, Imports, Investigations.

For the reasons stated in the preamble, the Commission amends 19 CFR to add part 208 to read as follows:

Part 208: Investigations with respect to commercial availability of textile fabric and yarn in sub-

Saharan African countries

1. The authority citation for part 208 reads as follows:

Authority: 19 U.S.C. 1335; 19 U.S.C. 3721(c).

2. Amend 19 C.F.R. to read as follows:

§ 208.1 Applicability of part.

§ 208.2 Definitions applicable to this part.

§ 208.3 Petitions.

§ 208.4 Institution of investigations; publication of notice; and availability of petition for public inspection.

§ 208.5 Public hearing.

§ 208.6 Service, filing, and certification of documents.

§ 208.7 Determinations and reports.

§ 208.8 Confidential business information; furnishing of nonconfidential summaries thereof.

208.1 Applicability of part.

This part 208 applies to proceedings of the Commission under section 112(c) of the African Growth and Opportunity Act, as amended (19 U.S.C. 3721(c)).

208.2 Definitions applicable to this part

(a) *Beneficiary sub-Saharan African country.* The term “beneficiary sub-Saharan African country” means those countries so designated by the President under 19 U.S.C. 2466a.

(b) *Lesser developed beneficiary sub-Saharan African country.* The term “lesser developed beneficiary sub-Saharan African country” means a beneficiary sub-Saharan African country that had a per capita gross national product of less than \$1,500 in 1998, as measured by the International Bank for Reconstruction and Development; Botswana; and Namibia.

(c) *Applicable 1-year period.* The term “applicable 1-year period” means the 12-month period beginning on October 1 and ending on September 30 of the following year.

208.3 Petitions

(a) *Who may file.* A petition under this part may be filed with the Commission by an interested party, including a producer of fabric or yarn in a beneficiary sub-Saharan African country, a producer of apparel in a lesser developed beneficiary sub-Saharan African country, or any other person who demonstrates to the satisfaction of the Commission a proper interest in filing a petition.

(b) *Contents of petition.* The Commission will consider only petitions that address a single yarn or single fabric. The term “a single yarn or single fabric” means a single product, which may be classified in more than one heading of the HTS or may be only part of a heading. A petition shall include the following information in support of a request for a Commission investigation and determination under this part, to the extent that such information is available from governmental or other sources. To the

extent information is not available from such sources, the petition may be based on best estimates, including an explanation of the basis therefor. If the petition does not include the required information and/or estimates and explanation, the petition will not be accepted, and it will instead be returned to the submitter. All quantities must be expressed in the unit of quantity used in the Harmonized Tariff Schedule of the United States, showing any conversion factors used (for example, most woven fabrics are reported in square meters, and most apparel are reported in numbers of units).

(1) *Product description.* The name and description of the fabric or yarn concerned, including fiber content, yarn size, fabric construction, and finishing processes, specifying the United States tariff provision under which such article is classified (to the 8-digit level if possible) and the beneficiary sub-Saharan African country or countries in which the fabric or yarn is produced.

(2) *Statement of interest.* The names and addresses of the interested party or parties filing the petition or represented in the petition, the location and nature of their establishments, a description of the fabrics, yarns, and apparel that they produce, import, and/or sell, for each party filing or represented (including but not limited to the fabric or yarn that is a subject of the petition), and the basis for asserting that such person or entity is an interested party eligible to file a petition under this part.

(3) *Basis for certain statements.* The basis for asserting that the subject fabric or yarn produced in a beneficiary sub-Saharan African country is available in “commercial quantities” and for “use” in a lesser developed beneficiary sub-Saharan African country or countries. In support of a claim that such fabric or yarn is available in “commercial quantities,” provide evidence for the 3 most recent full years for which information is available, and partial year data for the most recent year (if less than a full year), that such fabric or yarn is available for sale to third parties and the quantities offered, and any evidence of such sales to third parties. Include advertisements or other documentation in support of such claim. In support of a claim that such fabric or yarn is available for “use” in a lesser developed beneficiary sub-Saharan African country or countries, provide evidence for the 3 most recent full years for which information is available, and partial year data for the most recent year (if less than a full year), of any offers, orders, or contracts or other supporting documentation. For orders already delivered, indicate the quantity involved and the time and location of the deliveries to the apparel producer. For orders for which deliveries have not yet been made, indicate the time or likely time of the receipt by an apparel producer in all countries where the fabric or yarn has been sold or offered for sale, including lesser developed sub-Saharan African country or countries.

(4) *Data concerning fabric and yarn.* With respect to the subject fabric or yarn:

(i) Data on production, sales, inventories, and capacity, that is supportable through documentation that can be made available to the Commission, for each firm known or believed to be producing the subject fabric or yarn in a beneficiary sub-Saharan African country, for each of the 3 most recent full years for which data are available, and partial year data for the most recent year (if less than a full year);

(ii) The name, address (house number, street, city, country, postal mailing number), telephone number, email address, and contact person for each producer known or believed to be producing such fabric or yarn in a beneficiary sub-Saharan African country.

(5) *Orders from apparel producers and other users.* Data on orders from apparel producers and other users in all countries where the fabric or yarn has been sold or offered for sale, including lesser developed beneficiary sub-Saharan African countries, by country, for the most recent full year and partial year (if less than a full year), and projected orders for the 1-year period (October 1-September 30) beginning after the Commission’s determination. The information furnished shall include the full fabric

or yarn specification in the order, including, but not limited to, the fiber content, yarn size, fabric construction, finishing processes, quantities, projected delivery time for the fabric or yarn to the customer identified in the order, and any other information that the interested party submitting the petition believes is relevant. It shall also include the name, address (house number, street, city, country, postal mailing number), telephone number, email address, and contact person (a) for each beneficiary sub-Saharan African fabric or yarn producer identified in each reported order, and (b) for each lesser developed beneficiary sub-Saharan African apparel producer or other user identified in each reported order.

(6) *Estimated quantity available in next 1-year period.* Estimated production of the subject fabric or yarn, by firm, for the 1-year period (October 1-September 30) beginning after the Commission's determination, and an estimate of the quantity of such production of fabric or yarn, by firm, that will be available in lesser developed beneficiary sub-Saharan African countries in that 1-year period, and basis for that estimate, including orders and other supporting documents.

Sec. 208.4 Institution of investigations; publication of notice; and availability of petition for public inspection.

(a) *Institution of investigation and publication of notice.* The Commission, after receipt of a petition under this part, properly filed, will institute an appropriate investigation not later than 10 days after receipt of the petition, and publish notice thereof in the Federal Register.

(b) *Contents of notice.* The notice instituting the investigation will identify the petitioner, the fabric or yarn that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, the deadlines for filing briefs, statements, and other documents, page limits (if any) on posthearing briefs and documents, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information.

(c) *Availability for public inspection.* The Commission will promptly make each petition available for public inspection (with the exception of confidential business information).

208.5 Public hearing.

(a) *In general.* The Commission may, in its discretion, hold a public hearing in connection with an investigation under this part. If the Commission holds a public hearing, it will do so only after having caused reasonable notice thereof to be published in the Federal Register.

(b) *Opportunity to appear.* All interested parties will be afforded an opportunity to be present, to present evidence, and to be heard at any such hearing.

208.6 Service, filing, and certification of documents.

(a) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including Sec. 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file the confidential version on or before the deadline date and may file the nonconfidential version no later than one business day after the deadline for filing the document. If the submitter is a party, the

submitter is to serve the nonconfidential version of the document on other parties on the service list no later than one business day after the deadline for filing the document. The confidential version filed with the Commission shall enclose all confidential business information in brackets and have the following warning marked on every page: "Bracketing of CBI not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonconfidential version of the document is due to be filed. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time as the nonconfidential version is filed. No changes to the document other than bracketing and deletion of confidential business information are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with Sec. 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in Sec. 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in Sec. 201.11 of this chapter, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list and a certificate of service shall then be filed. Notwithstanding Sec. 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

(c) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

208.7 Determinations and reports.

(a) *Determinations.* When relevant information is not available on the record or any party withholds information that has been requested by the Commission, the Commission will make its determination on the basis of the facts available. When the Commission relies on information submitted as facts available, it will, to the extent practicable, corroborate the information from independent sources that are reasonably available to the Commission.

(b) *Time for determinations and reports.* The Commission will make its determinations under section 112(c)(2)(A) and (B)(i) of AGOA and transmit its reports to the President by September 25, 2007, with respect to petitions received on or before March 28 and accepted on or before April 11, 2007, and will make its determinations by August 1 of subsequent years with respect to petitions received on or before January 15 and accepted on or before February 1 of those years.

(b) *Contents of report.* The Commission will include in its report to the President the following:
(1) The determination made with respect to whether a fabric or yarn produced in beneficiary sub-

Saharan African countries is available in commercial quantities for use in lesser developed beneficiary sub-Saharan African countries, and an explanation of the basis for the determination;

(2) If the determination in para. (1) is affirmative, a determination with respect to the quantity of the fabric or yarn that will be so available in lesser developed beneficiary sub-Saharan African countries in the applicable 1-year period beginning after the determination is made;

(3) Any dissenting or separate views by members of the Commission regarding such determinations.

(c) *Public version of report.* Upon making its report to the President, the Commission will make such report public (with the exception of information which the Commission determines to be confidential), and publish a summary thereof in the Federal Register.

208.8 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* In the case of an investigation under this part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of Sec. 201.6 of this chapter unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President (and/or the United States Trade Representative); such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: February 21, 2007