

United States International Trade Commission

Earned Import
Allowance Program:
Evaluation of the
Effectiveness of the
Program for Certain
Apparel from the
Dominican Republic
Second Annual Report

Investigation No. 332-503

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Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic

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Executive Summary

This report contains the results of the Commission’s second annual review of the Earned Import Allowance Program (EIAP) for the Dominican Republic.¹ While a few U.S. and Dominican apparel industry sources stated that the EIAP has helped to maintain production of cotton bottoms (defined below) in the Dominican Republic, these same sources also indicated that the program, as it is currently structured, does not provide sufficient incentives to make the apparel industry in the Dominican Republic competitive vis-à-vis other suppliers of cotton bottoms to the U.S. market. In addition, although U.S. exports to the Dominican Republic of cotton fabrics of a weight suitable for making bottoms (bottom-weight fabrics) have increased since the program started at the end of 2008, it appears that this increase is not necessarily attributable to incentives provided under the EIAP.

Overview of the EIAP

The EIAP, which is administered by the U.S. Department of Commerce, provides an uncapped benefit for duty-free U.S. imports of certain woven cotton pants and trousers, bib and brace overalls, breeches and shorts, and skirts and divided skirts (collectively referred to in the apparel industry as “bottoms”). The bottoms must have been assembled in the Dominican Republic from foreign fabric, and they must be accompanied by a certificate documenting the purchase of certain U.S.-produced woven cotton fabric at a ratio of 2-for-1. Under this formula, for every 2 units of qualifying “wholly formed” fabric (defined as formed in the United States from U.S.-formed yarns) purchased for apparel production in the Dominican Republic, a 1-unit credit is received that can be used in the duty-free importation of apparel into the United States that has been manufactured using non-qualifying fabric. Twelve companies are currently registered to use the EIAP, up from nine a year ago, although about one-third of registered firms are currently not using the program.

The procedures and program requirements for the EIAP have not changed since the Commission’s first annual review of the program in 2010. However, in July 2010, the Department of Commerce issued a *Federal Register* notice with a final determination concerning the term “wholly formed” as it relates to qualifying woven fabric under the EIAP. The Department of Commerce stated that it would interpret “wholly formed” to mean that fabrics purchased from the United States must be dyed, finished, and printed in the United States in order to generate credits under the program. Several U.S. and Dominican apparel industry representatives indicated that they disagreed with this interpretation, expressing the view that it limits the flexibility of Dominican apparel producers in sourcing fabrics and increases their costs.

¹ The review is being conducted for the purpose of evaluating the effectiveness of the EIAP and making recommendations for improvements, and is required by section 404(d) of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) Implementation Act, as amended (the Act) (19 U.S.C. 4112(d)).

Evaluation of the EIAP

Based on information available to the Commission, it does not appear that the EIAP has provided a sufficient incentive to companies to increase production of woven cotton bottoms in the Dominican Republic. Despite reports that U.S. apparel buyers are once again making purchases in the Western Hemisphere, there were no reports of new investment in the Dominican Republic as a result of the program, and Dominican industry sources indicate that since the end of 2009, plants producing cotton bottoms in the Dominican Republic have closed and employment has declined. In addition, total U.S. imports of woven cotton bottoms from the Dominican Republic continued to decline overall in 2010 from 2009 levels, despite an overall increase in U.S. imports of woven cotton bottoms from the world during the same period. Even though U.S. imports of cotton bottoms from the Dominican Republic using foreign fabric credits enter free of duty under the EIAP, as do cotton bottoms made with qualifying U.S. fabrics under CAFTA-DR, the volume of imports under these provisions declined during 2009–10. By contrast, imports of these products from the Dominican Republic under normal trade relations (NTR) duty rates (16.6 percent for men’s and boy’s woven cotton pants) increased in 2010. At least two reasons may explain this situation. One is that the EIAP reportedly does not provide enough of a benefit to make it cost-effective to use U.S.-finished fabrics to produce apparel for export to the United States. The other is that the EIAP for the Dominican Republic is one of only several options available to U.S. apparel firms looking for duty-free treatment for imports from countries in the Western Hemisphere.

It is unclear to what extent the program has benefited U.S. fabric producers. Although U.S. exports to the Dominican Republic of the subject bottom-weight cotton fabrics have increased since the program was implemented in December 2008, some of the increase, especially in the first year of trade under the program, consisted mostly of foreign greige (unfinished) fabrics that were dyed and finished in the United States. U.S. textile firms indicated that since the first annual review of the program in 2010, global cotton shortages have boosted demand for U.S. cotton fabrics in general, suggesting that the rise in exports is not necessarily attributable to the EIAP. Nevertheless, since the first annual review, more U.S. textile firms appear to have benefited from the increased exports, including firms that dye and finish fabrics, firms that weave greige fabrics, and firms that are vertically integrated to weave, dye, and finish fabrics.

Recommendations concerning the EIAP

During the second annual review of the EIAP, the Commission sought recommendations from industry and other sources concerning possible improvements to the EIAP. Recommendations offered during this review by apparel firms were generally the same as those received by the Commission during the first annual review. They include (1) lowering the 2-for-1 ratio of U.S. to foreign fabric to a 1-for-1 ratio; (2) including other types of fabrics and apparel items in the EIAP; (3) expanding the program to other CAFTA-DR members; and (4) changing the requirement that dyeing, finishing, and printing of eligible fabrics take place in the United States.

In particular, U.S. and Dominican apparel firms and Dominican government representatives suggested that changing the ratio for the EIAP from 2-for-1 to 1-for-1

would give Dominican apparel producers greater flexibility in their product offerings and help lower their overall costs. U.S. and Dominican apparel firms also suggested that the program might be more widely used if the program were expanded to include other types of fabrics and if denim apparel were added to the program. Finally, several U.S. and Dominican apparel firms recommended that dyeing, finishing, and printing be allowed to take place in the CAFTA-DR region, rather than just in the United States; U.S. textile industry representatives expressed opposition to this proposal.

CHAPTER 1

Introduction

This report contains the results of the Commission’s second annual review of the Earned Import Allowance Program (EIAP) for the Dominican Republic. The review is being conducted in order to evaluate the effectiveness of the EIAP and recommend ways to improve the program; it is required by section 404(d) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, as amended (the Act) (19 U.S.C. 4112(d)).¹ The Commission’s first annual report was delivered to the House Committee on Ways and Means and Senate Committee on Finance in July 2010.² Like the first report, this report evaluates the effectiveness of the EIAP for the Dominican Republic, based on usage of the program; provides data on trade between the United States and the Dominican Republic in the subject products; and sets out reported effects on the U.S. and Dominican industries. The report also compiles recommendations for improving the program made by U.S. and Dominican apparel producers, U.S. textile industry representatives, and Dominican government representatives.

Program Overview and Product Coverage

The EIAP, which is administered by the U.S. Department of Commerce, authorizes certain apparel articles wholly assembled in the Dominican Republic to enter the United States free of duty if accompanied by a certificate confirming the purchase of certain U.S. fabric.³ More specifically, the EIAP provides an uncapped benefit (i.e., a benefit with no ceiling amount) for duty-free imports of woven cotton pants and trousers, bib and brace overalls, breeches and shorts, and skirts and divided skirts (hereafter referred to as woven cotton bottoms) assembled in the Dominican Republic from foreign fabric, provided they are accompanied by a certificate documenting the purchase of certain U.S.-produced woven cotton fabric at a ratio of 2-for-1. Under this formula, for every 2 units of qualifying fabric (defined as wholly formed in the United States from U.S.-formed yarns) purchased for apparel production in the Dominican Republic, a 1-unit credit is received that can be used in the importation of apparel using non-qualifying fabric. Twelve companies are currently registered to use the EIAP. The first imports into the United States under the program entered in April 2009; thus, the year 2010 represents the first full calendar year of operation of the program.

¹ Section 404 was added to the Act by section 2 of Public Law 110-436, approved October 16, 2008, “An act to extend the Andean Trade Preference Act, and for other purposes.” Section 404(d) requires the Commission to conduct annual reviews of the program “for the purpose of evaluating the effectiveness of, and making recommendations for improvements in, the program,” and directs the Commission to transmit its reports on the results of such reviews to the House Committee on Ways and Means and the Senate Committee on Finance.

² The Commission’s first annual report, investigation No. 332-503, *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic*, is available from the Commission’s Web site at <http://www.usitc.gov/publications/332/pub4175.pdf>.

³ Apparel made in the Dominican Republic from U.S. fabric already enters the United States free of duty under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), but the EIAP extends duty-free treatment to specific apparel made with foreign fabric. See box 2.1 in chapter 2 for more information on CAFTA-DR and certain other trade preference programs.

The procedures and program requirements for the EIAP have not changed since the Commission's first annual review of the program. However, shortly after publication of the first annual review, the Department of Commerce issued a determination concerning the term "wholly formed" as it relates to qualifying woven fabric under the EIAP.⁴ Neither the implementing legislation nor the interim regulations issued by the Department of Commerce in January 2009 explicitly defined the term "wholly formed." From the program's inception, industry parties have differed in their interpretation of this term. Users of the EIAP operating in or sourcing from the Dominican Republic recommended that the term "wholly formed" be interpreted to allow dyeing, finishing, and printing to take place in other countries, namely Guatemala and Nicaragua. Representatives of the U.S. textile industry, however, asserted that "wholly formed" meant that eligible fabrics under the EIAP had to be dyed and finished in the United States.⁵ In an April 2009 *Federal Register* notice, the Department of Commerce announced that in the interim it would interpret "wholly formed" to mean that fabrics purchased from the United States must be dyed, finished, and printed in the United States to receive credits under the program.⁶

Following a period of public comment, the Department of Commerce formally announced on July 29, 2010, that it would continue to interpret the term "wholly formed" to mean that all production processes and finishing operations (i.e., dyeing, finishing, and printing) must take place in the United States, beginning with the weaving of the fabric and ending with a finished fabric ready for cutting or assembly and requiring no further processing. In the *Federal Register* notice announcing its final determination, it stated that over half of the value of a fabric is added through various dyeing and finishing processes. Therefore, allowing such processes to take place outside of the United States would undercut benefits to the U.S. textile industry from the EIAP and run counter to one of the aims of the EIAP, which is to promote the use of U.S. fabrics.⁷

The qualifying fabrics that may be purchased to receive credits under the program have not changed since the EIAP began. Eligible fabrics encompass woven cotton fabrics wholly formed in the United States from yarns wholly formed in the United States that are suitable for use in the manufacture of eligible apparel articles. This includes twills that are heavy enough to be used in the manufacture of bottoms (bottom-weight twills) classified in chapter 52 of the U.S. Harmonized Tariff Schedule (HTS), including denim. Also eligible are fabrics woven in the United States from foreign yarns deemed commercially unavailable in the United States, fabrics containing non-U.S. nylon filament yarns, and fabrics containing non-U.S. yarns if the total weight of such yarns comprises less than 10 percent of the total weight of the fabric. Most of the qualifying fabric for which credits have been claimed under the EIAP has been 3-thread or 4-thread twill, including cross twill, containing 85 percent or more by weight of cotton and weighing more than 200 grams per square meter (HTS subheading 5209.32.00). To a

⁴ Section 404(c)(4) of the Act reads, "the term 'qualifying fabric' means woven fabric of cotton wholly formed in the United States from yarns wholly formed in the United States...suitable for use in the manufacture of apparel items such as trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts or pants..."

⁵ For more information on the issue of the definition of "wholly formed," see chapter 4 of USITC, *Earned Import Allowance Program*, and OTEXA's Web site at <http://www.otexa.ita.doc.gov/>.

⁶ 74 Fed. Reg. 15255 (April 3, 2009).

⁷ 75 Fed. Reg. 45603 (August 3, 2010).

lesser extent, other fabrics have also been purchased for credits, including denim and other twill fabrics of a different construction.⁸

No new apparel products have been added to the EIAP program. Eligible apparel articles are woven cotton pants and trousers, bib and brace overalls, breeches and shorts, and skirts and divided skirts, classified in chapter 62 of the HTS. Cotton denim bottoms are specifically excluded from preferential treatment under the EIAP.⁹ Qualifying apparel items enter the United States free of duty under HTS subheading 9822.06.05, which does not identify the specific types of woven cotton bottoms coming in under the program. Based on trade data and information from industry sources, it is likely that most imports under the EIAP are of men's and boys' trousers and breeches of cotton, other than corduroy or blue denim (HTS statistical reporting numbers 6203.42.4016 and 6203.42.4046).

Scope and Approach

This report provides an assessment of the effectiveness of the EIAP through March 2011, a summary of recommended changes or improvements to the program, and a presentation of the positions of interested parties. In addition to available data and published materials on the U.S. and Dominican textile and apparel industries and bilateral trade, the report draws on information obtained through written submissions received by the Commission and in-depth interviews with representatives of companies, industry associations, and government organizations. During its investigation, the Commission sought comments on the EIAP and recommendations for improvements to the program via a *Federal Register* notice announcing institution of the investigation and scheduling of a public hearing. Two interested parties filed requests to appear at the Commission's hearing but later withdrew, and the hearing was canceled. The Commission received three written submissions, which are summarized in chapter 4 and also incorporated into the Commission's report, as appropriate. Commission staff contacted in excess of 30 entities, including all registered users of the EIAP (U.S. and Dominican apparel producers), U.S. fabric producers, U.S. dyeing and finishing firms, U.S. and Dominican government officials, and industry associations. Telephone and personal interviews, as well as correspondence with responding firms, focused on firms' manufacturing operations in the Dominican Republic, the effects of the program on U.S.-Dominican Republic trade and investment, the effects of the program on U.S. and Dominican producers, and suggested changes to the program.

⁸ U.S. government official, interview by USITC staff, Washington, DC, April 13, 2010, and February 22, 2011; textile industry representatives, telephone interviews by USITC staff, April 14 and 15, 2011.

⁹ U.S.-produced denim fabrics that earn export credits under the EIAP could, however, be used to produce denim apparel in the Dominican Republic that is eligible for duty-free treatment in the United States under the standard CAFTA-DR provisions.

CHAPTER 2

Evaluation of the Earned Import Allowance Program

Overview

While some U.S. and Dominican apparel industry sources indicated that the EIAP for the Dominican Republic has had beneficial effects, many of these same sources also indicated that the program, as it is currently structured, does not provide sufficient incentives to make the Dominican apparel industry competitive vis-à-vis other suppliers of cotton bottoms to the U.S. market. U.S. imports of woven cotton bottoms from the Dominican Republic continued to decline in 2010 and in the beginning of 2011, despite reports of renewed interest on the part of U.S. apparel buyers in purchasing from the CAFTA-DR region.¹

Nonetheless, U.S. exports of woven cotton fabrics to the Dominican Republic increased in 2010 and January–March 2011. Based on industry reports, it appears that these increases included EIAP qualifying fabrics that have been woven, dyed, and finished in the United States. In contrast, as reported in the first investigation, most of the initial increase in U.S. exports of certain bottom-weight cotton fabrics during 2009 and the first quarter in 2010 likely consisted of third-country greige (unfinished) fabrics that were dyed and finished in the United States.² However, it is unlikely that the EIAP was the primary factor influencing the recent increase in exports of U.S. bottom-weight cotton fabrics to the Dominican Republic. Industry sources note that demand for U.S. cotton fabrics has increased in general, in part because of recent global cotton shortages. U.S. mills not only have access to domestic supplies of cotton, but they reportedly have also become more price competitive vis-à-vis foreign suppliers than a year ago, in part because of the cotton shortages.

Program Participation

Twelve companies have established accounts to participate in the EIAP, up from nine in June 2010.³ However, about one-third of registered firms are currently not using the program, and some firms are only sporadic users.⁴ As of March 1, 2011, the Department of Commerce had issued export credits for a grand total of 13.5 million square meter equivalents (SMEs) of fabric. Based on the previous figure reported in the Commission’s first annual review, this indicates that 5 million credits were issued in the 10-month period between May 1, 2010 and March 1, 2011. Based on information from industry sources, the credits earned since May 1, 2010, have been from both new purchases of

¹ Freeman, “Apparel Firms Eye Central America Sourcing,” March 24, 2011.

² USITC, *Earned Import Allowance Program*, 2010, 3-5 to 3-7.

³ U.S. government official, interview by USITC staff, Washington, DC, February 22, 2011.

⁴ Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011; U.S. and Dominican apparel industry representatives, telephone interviews by USITC staff, April 4, 5, and 25, 2011; U.S. and Dominican apparel industry representatives, e-mail messages to USITC staff, March 21 and April 20, 2011; U.S. government official, interview by USITC staff, Washington, DC, February 22, 2011.

U.S.-produced fabrics and from purchases made before the start of the program that were eligible for credits retroactively.

Since the program began on December 1, 2008, total U.S. imports of woven cotton bottoms under the EIAP through March 2011 have amounted to about 9.4 million SMEs. Assuming no additional credits have been earned since March 1, 2011, approximately 4.1 million SMEs worth of woven cotton bottoms can still enter the United States free of duty under the EIAP using third-country fabrics before all the existing credits are depleted.⁵ Although total imports under the program were higher in 2010 than in 2009, 2010 data reflect imports for the full year, compared with 2009, which showed data for only nine months, as imports under the program did not start until April 2009 (table 2.1). In fact, average quarterly imports of eligible apparel into the United States under the program were less in 2010 than in 2009 (1.2 million SMEs on average per quarter in 2010, compared with 1.4 million SMEs on average per quarter in 2009).⁶

TABLE 2.1 U.S. imports of qualifying apparel under the EIAP

	1st quarter	2nd quarter	3rd quarter	4th quarter	Total
Year	Quantity (million SMEs)				
2009	(^a)	1.7	1.4	1.0	4.1
2010	0.9	1.3	1.7	0.8	4.6
2011	0.7				0.7
	Value (million \$)				
2009	(^a)	9.3	10.2	7.4	26.9
2010	6.4	9.5	11.6	5.7	33.1
2011	5.4				5.4

Source: Based on U.S. import data supplied by the USDOC, OTEXA.

Note: Data may not sum to total due to rounding.

^aThere were no imports under the program in the first quarter of 2009.

Benefits to Dominican and U.S. Apparel Firms

Although sources indicate that U.S. apparel buyers have started to return to sourcing from companies in the Western Hemisphere for some of their apparel needs,⁷ it does not appear that the woven cotton bottoms industry in the Dominican Republic has been a beneficiary of this trend, despite the incentives provided under the EIAP.⁸ The EIAP has not resulted in new investment, and industry sources indicate that production of woven cotton bottoms in the Dominican Republic has declined in the past year. The EIAP for the

⁵ Calculated based on credits earned totaling 13.5 million SMEs, minus U.S. imports of 9.4 SMEs under the program. USDOC, OTEXA, “Free Trade Agreements, CAFTA-DR.”

⁶ The 2009 average quarterly data are based on the last three quarters of 2009, since imports under the program did not start until April 2009.

⁷ Freeman, “Apparel Firms Eye Central America Sourcing,” March 24, 2011.

⁸ The American Manufacturing Trade Action Coalition (AMTAC) suggested that the current import data reflect the global economic downturn. AMTAC, written submission to the USITC, April 1, 2011, 3. Nevertheless, the volume of U.S. imports of these woven cotton bottoms from the world increased by nearly 8 percent during 2009–10, compared with a 13 percent decline for those from the Dominican Republic. Based on USITC DataWeb (accessed April 18, 2011).

Dominican Republic is one of several options available to U.S. apparel firms looking for duty-free treatment for imports from countries in the Western Hemisphere (box 2.1).

A number of U.S. and Dominican apparel firms indicated to the Commission in connection with the first annual report that they might not use the program once their retroactive credits run out, because the higher cost of using U.S. fabrics under the 2-for-1 program outweighed the benefit of the 16.6 percent duty break.⁹ As described in that report, it initially appeared that most U.S. imports under the program had been using credits earned retroactively for fabrics exported from the United States to the Dominican Republic before the start of the program. Since the first annual report, some U.S. and Dominican firms indicated they have been earning new credits through purchases of U.S. wholly formed fabrics, though these purchases have not necessarily been attributable to the program. Also, a few sources indicated in connection with this report that if the ratio were not changed from 2-for-1 to 1-for-1, their business in the Dominican Republic would likely decline further.

In its comments for this review, one large Dominican bottoms producer, D'Clase Apparel International (D'Clase), indicated that although the program has helped it to be more competitive in supplying the U.S. market, it has nonetheless shut two of its facilities in the Dominican Republic and laid off 1,600 workers there since the end of 2009.¹⁰ D'Clase stated that since the program was not changed as recommended in the first annual review, it was no longer competitive in the production of woven bottoms for certain customers, which led to the plant closures. D'Clase further warned that it is at risk of closing its entire operation.¹¹ In its 2009 written submission to the Commission, D'Clase had recommended that the ratio of U.S. fabric to foreign fabric be lowered from 2-for-1 to 1-for-1, and that U.S. greige fabric finished in the CAFTA-DR region qualify for credit as U.S. wholly formed fabric.¹² Table 2.2 shows an example in the differences in the cost of a pair of pants delivered to the United States under the different scenarios, using data provided by D'Clase in its 2009 submission.

TABLE 2.2 Example showing the cost of cotton pants made in the Dominican Republic under various scenarios on a landed duty-paid basis (dollars)

Scenario	Cost
Pants made with U.S. fabric, duty-free under CAFTA-DR	9.74
Average cost of pants under a 2-for-1 scenario, duty-free	9.54
Average cost of pants using 1-for-1 scenario, duty-free	9.44
Pants made only with foreign fabric, duty-free, using credits earned retroactively for U.S. fabrics purchased prior to the start of the program	9.13

Source: Estimates by Commission staff based on data provided by D'Clase Apparel in connection with the first annual report. D'Clase Apparel International, written submission to the USITC, December 2, 2009.

Note: The fabric costs used in the table were \$2.21 per square meter equivalent (SME) or \$3.08 per linear yard for U.S. fabric and \$1.79 per SME or \$2.50 per linear yard for foreign fabric.

⁹ The normal trade relations (NTR) duty rate for men's and boys' cotton trousers that are entered under 6203.42.40 is 16.6 percent. As reported in chapter 1, most of the imports of woven cotton bottoms from the Dominican Republic enter under this subheading.

¹⁰ D'Clase Apparel International, written submission to the USITC, March 3, 2011.

¹¹ D'Clase Apparel International, written submission to the USITC, March 3, 2011.

¹² D'Clase Apparel International, written submission to the USITC, November 2, 2009.

BOX 2.1 Importing Duty Free from the Western Hemisphere: Alternatives to EIAP for the Dominican Republic

In addition to the EIAP for the Dominican Republic, there are other options through which woven cotton bottoms made from foreign fabrics can be imported into the United States duty free from other countries in the Western Hemisphere. For example, as part of CAFTA-DR, Nicaragua has a tariff preference limit (TPL) that allows duty-free treatment for a certain amount of woven cotton and man-made fiber apparel (including bottoms) made from foreign fabrics. The TPL requires that Nicaragua export an equal amount of such apparel to the United States under CAFTA-DR that has been made of qualifying U.S. fabric (U.S.-formed fabric made of U.S.-formed yarn) in the same year (also sometimes referred to as a “1-for-1” provision).^a Since the CAFTA-DR does not require that the qualifying fabric be “wholly formed” in the United States, fabric may be dyed and finished in Nicaragua before being made into apparel to qualify for the U.S. “credit” under the 1-for-1 provision. The United States also offers duty-free imports under several trade preference provisions for U.S. apparel imports from Haiti. Two examples are a 2-for-1 EIAP for all types of apparel and a tariff-rate quota (TRQ) through which the United States provides duty-free treatment for a certain amount of woven apparel made from foreign fabrics.^b Although the TPL for U.S. imports from Nicaragua was fully utilized in 2010, the TRQ for Haiti was less than 30 percent filled that year.^c

In addition, U.S. imports of woven cotton bottoms made of qualifying U.S. fabrics are eligible for duty-free treatment under several FTAs, including from 10 countries in the Western Hemisphere with which the United States currently has FTAs (as of May 13, 2011).^d For example, under the CAFTA-DR and the North American Free Trade Agreement (NAFTA), U.S. imports of woven cotton bottoms made in one of the partner countries from qualifying U.S. and/or partner country fabrics are eligible for duty-free treatment. Although U.S. exports of U.S.-made greige fabrics that are dyed and finished elsewhere in the CAFTA-DR region do not qualify for import credits under the EIAP for the Dominican Republic, they can be used in the production of woven cotton bottoms in the Dominican Republic that are then eligible for duty-free treatment under CAFTA-DR.

Mexico and Nicaragua are both larger suppliers than the Dominican Republic of woven cotton bottoms to the U.S. market (excluding denim). In 2010, Mexico accounted for 4.7 percent of the volume of woven cotton bottoms imported into the United States, compared with 1.4 percent for Nicaragua and 0.8 percent for the Dominican Republic. Nevertheless, all three suppliers saw their share of the U.S. market shrink between 2007 and 2010. In contrast, imports from the largest U.S. suppliers of woven cotton bottoms, China and Bangladesh, grew during the same period.^e

^aIf Nicaragua fails to export the stipulated amount of apparel made with qualifying U.S. fabrics to the United States in a calendar year, the next year’s TPL is reduced by the amount of the shortfall.

^bThe preference programs are part of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE I), Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), and the Haitian Economic Lift Program Act of 2010 (HELP). For additional information on these provisions, see USITC, *Textiles and Apparel: Effects of Special Rules*, 2008; USDOC, OTEXA Web site, “Trade Preference Programs” (accessed May 12, 2011).

^cUSDOC, OTEXA Web site, “Free Trade Agreements” (accessed May 12, 2011); USDOC, OTEXA Web site, “Trade Preference Programs” (accessed May 12, 2011).

^dThese countries include the partner countries under the CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua); NAFTA (Canada and Mexico); the United States-Peru Trade Promotion Agreement; and the United States-Chile Free Trade Agreement.

^eBased on USITC DataWeb data (accessed April 18, 2011).

Fishman & Tobin, a U.S. apparel firm that specializes in boys’ dresswear and school uniforms, stated that the EIAP has not had any impact on its business because of the way the 2-for-1 program has been interpreted—namely, the definition of wholly formed.¹³ It recommended that the U.S. greige fabrics that are dyed and finished in the CAFTA-DR countries qualify for credits.¹⁴ It noted that it owns factories in the Dominican Republic and currently employs about 2,000 workers there. Fishman & Tobin indicated that it

¹³ Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011.

¹⁴ Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011. Fishman & Tobin has also made this recommendation in connection with the first annual investigation. Fishman & Tobin, written submission to the USITC, November 2, 2009.

occasionally buys U.S. fabric, but that 95 percent of its fabric purchases are of foreign fabrics, mostly from China and Pakistan.

An official of the National Free Zones Council of the Dominican Republic recently indicated that while the EIAP has helped keep some Dominican apparel firms in business, a few Dominican apparel firms are expected to close in 2011 because they did not sell enough trousers.¹⁵ The official said that changing to a 1-for-1 ratio would improve the flexibility of the Dominican apparel producers.

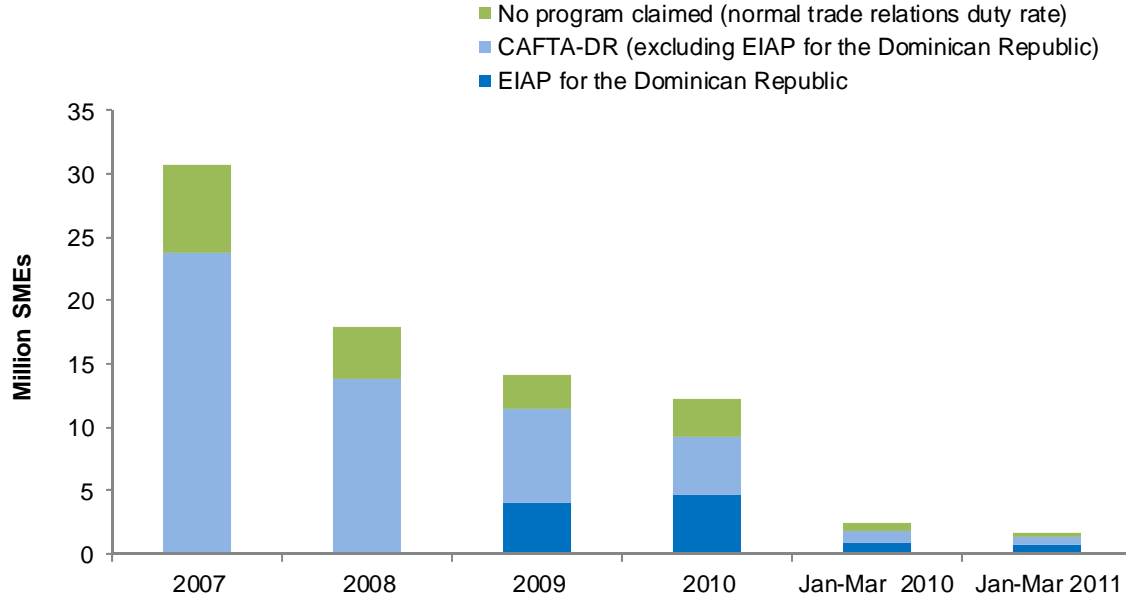
U.S. import data support the views expressed above. U.S. imports of woven cotton bottoms that were entered under all import programs from the Dominican Republic continued to decline in 2010 and in the first quarter of 2011, in terms of both absolute levels and market share (figures 2.1 and 2.2).¹⁶ In 2010, U.S. duty-free imports of woven cotton bottoms from the Dominican Republic under the CAFTA-DR totaled about 9.2 million SMEs (valued at \$57 million), of which about 4.6 million SMEs (\$33 million) consisted of imports under the EIAP program (figure 2.1).¹⁷ Imports under the EIAP accounted for 38 percent of the quantity and 49 percent of the value of total U.S. imports of woven cotton bottoms from the Dominican Republic in 2010. Total U.S. imports of woven cotton bottoms from the Dominican Republic under CAFTA-DR, including under the EIAP, declined in quantity by 20 percent during 2009–10 to 9.2 million SMEs. In contrast, the quantity of U.S. imports of woven cotton bottoms from the Dominican Republic under Normal Trade Relations (NTR) duty rates increased by 12 percent during the same period to 3.1 million SMEs, suggesting that it may not have been as cost-effective to meet the requirements to import duty free under CAFTA-DR (including the EIAP) as it was to pay the NTR duty rates (16.6 percent for men’s and boys’ cotton pants). If the EIAP program were cost-effective for Dominican and U.S. apparel firms, one would expect that imports of woven cotton bottoms under CAFTA-DR, including the EIAP, would have increased, rather than imports under NTR rates of duty. U.S. imports declined under both CAFTA-DR (including EIAP) and NTR duty rates in the first three months of 2011 compared with the same period in 2010.

¹⁵ Official of the National Free Zones Council of the Dominican Republic, telephone interview by USITC staff, April 12, 2011.

¹⁶ By comparison, the quantity of U.S. imports of woven cotton bottoms from Nicaragua increased by 16 percent during 2009–10 and declined by 8 percent during the first quarter of 2011 compared with the same period in 2010. USITC DataWeb (accessed April 19, 2011 and May 18, 2011).

¹⁷ Based on data from the USITC DataWeb (accessed April 19, 2011) and data supplied by the USDOC, OTEXA.

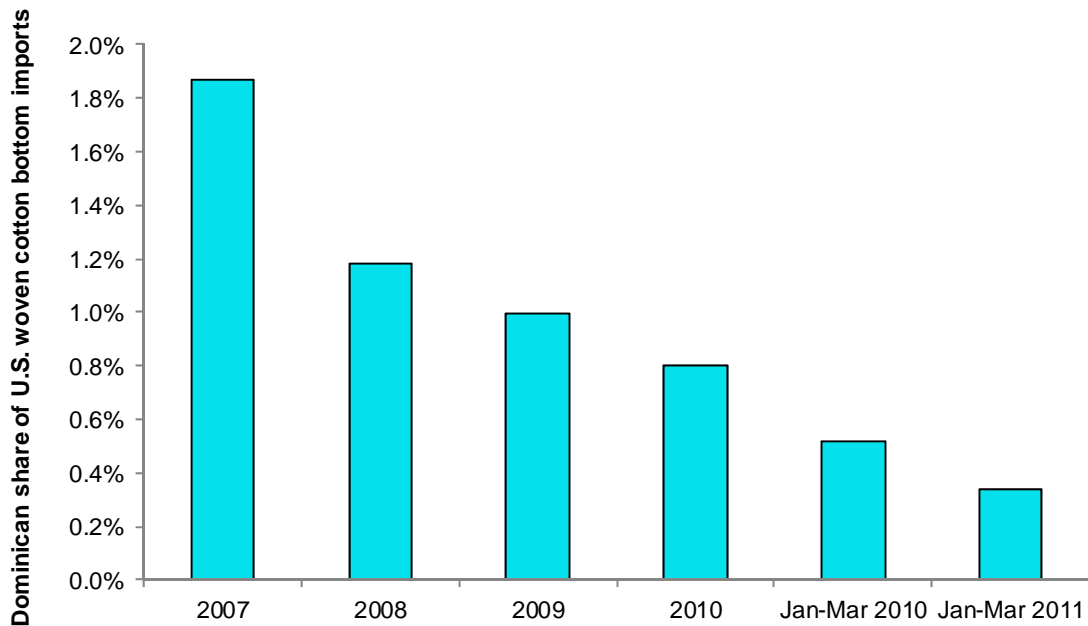
FIGURE 2.1 Woven cotton bottoms: Total U.S. imports from the Dominican Republic declined during 2007–10 and interim 2011.



Sources: Based on data from the USITC DataWeb (accessed April 18 and 19, 2011, and May 18, 2011). Data on imports under the EIAP supplied by the USDOC, Office of Textiles and Apparel.

Note: Data represent U.S. imports of the types of apparel eligible under the EIAP, as reported in chapter 1. Imports under the EIAP did not start until the second quarter of 2009. Imports under CAFTA-DR for 2007 also include some imports under the Caribbean Basin Trade Partnership Program.

FIGURE 2.2 Woven cotton bottoms: The Dominican share of total U.S. imports continued to decline in 2010 and interim 2011.



Source: USITC DataWeb (accessed April 19, 2011, and May 18, 2011).

Benefits to U.S. Textile Industry

U.S. exports of certain bottom-weight cotton fabrics to the Dominican Republic have increased substantially since the start of the EIAP, though it is unclear to what extent the EIAP contributed to the increase. These exports increased in terms of both absolute levels and the share of total U.S. exports during 2009–10 and in the first quarter of 2011 compared with the same period in 2010 (figures 2.3 and 2.4). It is difficult to discern from the export statistics the amount of fabrics that were eligible to earn credits under the EIAP, because the program covers woven cotton fabrics wholly formed in the United States from yarns wholly formed in the United States, while the export data also include exports of foreign greige fabrics that have been dyed, finished, and/or printed in the United States. As noted in the first annual report, some of the initial increase, as reflected in the first full year of exports under the program (April 2009–March 2010), likely consisted of increased exports of foreign greige fabrics that were dyed and finished in the United States.¹⁸ Firms used these fabrics to manufacture woven cotton bottoms in the Dominican Republic that were then exported to the United States using fabric credits earned retroactively from qualifying U.S. fabrics exported to the Dominican Republic before implementation of the program.

While it is likely that some of the fabrics exported from the United States to the Dominican Republic since March 2010 consisted of foreign greige fabrics that were dyed and finished in the United States, these exports also included fabrics wholly formed in the United States. U.S. textile firms indicated that recent global cotton shortages have boosted demand for U.S. cotton fabrics in general.¹⁹ Reflecting the shortages, the calendar-year average world price of cotton roughly doubled from \$0.78 per pound in 2009 to \$1.58 per pound in 2010;²⁰ in March 2011, the price peaked at \$2.30 per pound.²¹ While prices of all bottom-weight cotton fabrics have increased significantly in the past year, U.S. fabric mills indicated that prices for foreign fabrics have increased more than those for U.S. fabrics, particularly for greige fabrics, making U.S. fabrics more competitive than they have been in the past.²² In addition, some foreign fabric mills allegedly dropped their customers' fabric orders in order to secure higher prices to cover increased cotton costs, forcing these customers to then turn to U.S. suppliers.²³ Some foreign mills also reportedly faced cotton yarn shortages and were unable to fill orders in a timely way. One industry source indicated that prices for cotton fabrics were being quoted on a daily basis because cotton prices were so volatile. U.S. mills not only had access to cotton, but they were able to provide fabrics with shorter lead times, reducing the risk of unknown price increases or canceled orders.

¹⁸ According to Schedule B, U.S. domestic exports include imported merchandise that has been enhanced in value or changed in the form in which it is imported by further manufacturing or processing in the United States. Since imported greige fabrics are further processed by dyeing and finishing in the United States, they are considered a domestic export. Nevertheless, these fabrics would not qualify as U.S.-produced fabric for the purposes of the EIAP. For further information on the definition of domestic exports, see USDOC, Bureau of the Census, Schedule B, "Correct Way to Complete the SED," available at <http://www.census.gov/foreign-trade/schedules/b/2010/correctwayforb.pdf>.

¹⁹ U.S. textile industry representatives, telephone interviews by USITC staff, April 19 and 20, 2011.

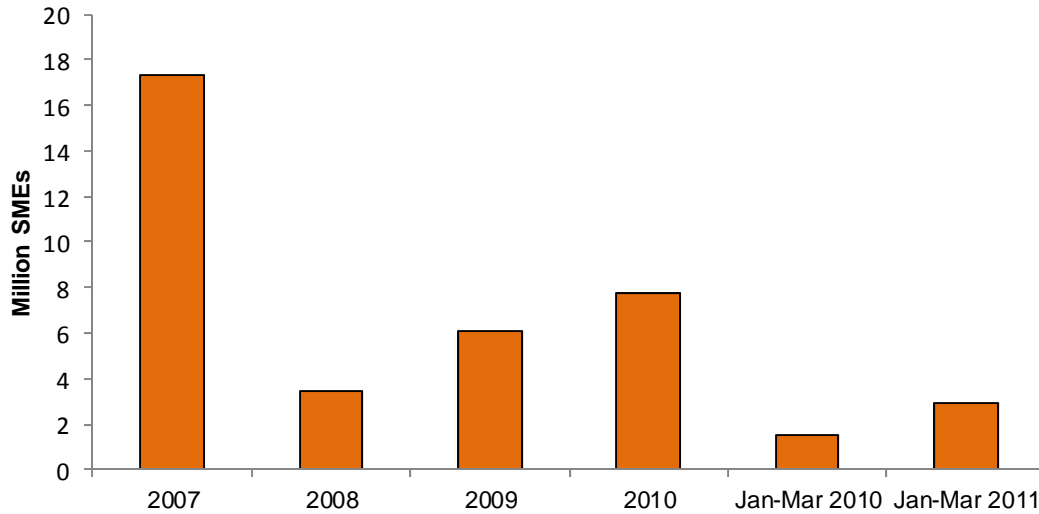
²⁰ National Cotton Council, Monthly Price Index, "A" Index.

²¹ National Cotton Council, Monthly Price Index, "A" Index.

²² U.S. textile industry representatives, telephone interviews by USITC staff, April 19 and 20, 2011.

²³ U.S. textile industry representatives, telephone interviews by USITC staff, April 20 and 28, 2011.

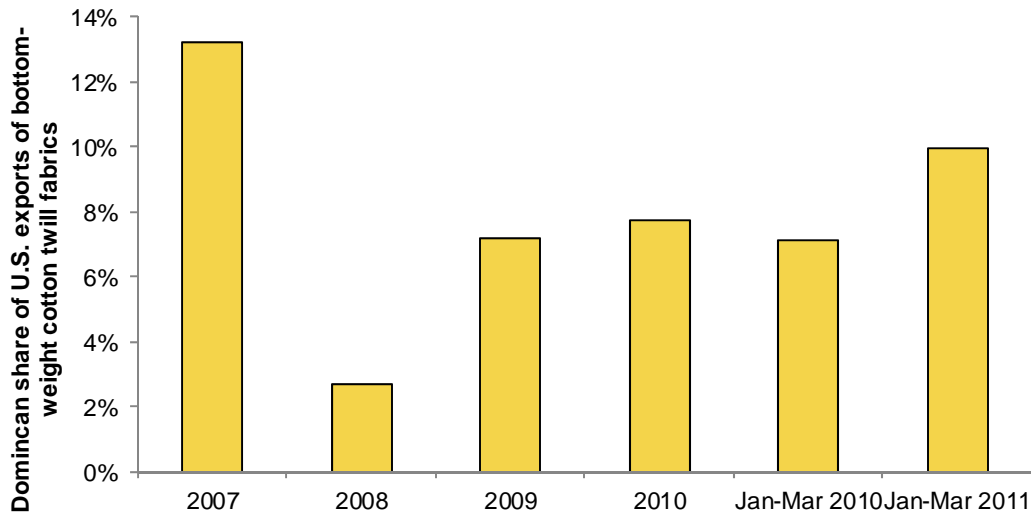
FIGURE 2.3 Bottom-weight cotton twill fabrics: U.S. exports to the Dominican Republic continued to grow in 2010 and the beginning of 2011.



Source: USITC DataWeb (accessed April 18, 2011 and May 18, 2011).

Note: Data represent U.S. imports of cotton heavy-weight denim, twill, and sateen fabrics under the following Schedule B headings: 5208.13.0000; 5208.19.2000; 5208.33.0000; 5208.39.2000; 5208.59.1000; 5209.32.0000; 5209.39.0030; 5209.42.0030; 5210.32.0000; 5210.39.2000; 5211.32.0000; 5211.39.0030; 5211.42.0030; 5211.42.0050; 5212.13.0000; 5212.23.0000; and 5212.24.0000.

FIGURE 2.4 Bottom-weight cotton twill fabrics: The Dominican share of U.S. exports continued to increase in 2010 and the beginning of 2011.



Source: USITC DataWeb (accessed April 18, 2011 and May 18, 2011).

Since U.S. exports during 2010 and year-to-date 2011 consisted not only of third-country greige fabrics that have been dyed and finished in the United States,²⁴ but also fabrics that have been wholly formed in the United States (woven, dyed, and finished in the United States from U.S. yarn), more textile mills have benefited from the increase in exports since the first annual review of the program. Thus, the mills that have benefited include not only those firms that dye and finish fabrics, but also firms that weave greige fabrics and firms that are vertically integrated to weave, dye, and finish fabrics. Firms that weave greige fabrics typically sell their fabrics to other U.S. firms that dye and finish the fabrics for export to the Dominican Republic.

As noted earlier, U.S. exports of bottom-weight woven cotton fabrics to the Dominican Republic have increased steadily since 2008, while U.S. imports of woven cotton bottoms from there have declined. Nevertheless, the quantity of U.S. exports of cotton bottom-weight fabrics to the Dominican Republic represent only a fraction of imports of cotton bottoms (as converted into SMEs). In 2010, U.S. exports of the bottom-weight cotton twill fabrics to the Dominican Republic totaled 7.8 million SMEs, roughly 63 percent of the level of U.S. imports of cotton bottoms from there in terms of quantity (SMEs). Therefore, it is likely that least some portion of the cotton bottoms produced in the Dominican Republic use foreign fabric. It is possible that the increase in U.S. exports of fabrics has displaced other sources of fabrics in the production of woven cotton bottoms in the Dominican Republic. It is also possible that some of the exported fabrics were used in apparel production in neighboring Haiti by firms that operate in both countries. Finally, although most of the export credits have been issued for twill fabrics, some export credits have been issued for denim fabrics. As noted earlier, denim apparel is not eligible to use credits under the program, so the declining trend in imports of woven cotton bottoms shown in figure 2.1 would not reflect any use of denim.²⁵

²⁴ According to U.S. textile industry sources, dyeing and finishing is the highest value-added process in the production of fabric and can add 50–75 percent or more to the value of an unfinished fabric. American Manufacturing Trade Action Coalition (AMTAC) officials, interview by USITC staff, Washington, DC, April 5, 2011; AMTAC, National Council of Textile Organizations, and National Textile Association, joint written submission to the USITC, November 3, 2009, 2; USITC hearing transcript, November 18, 2009, 49 (testimony of Carlos Moore president, AM&S Trade Services on behalf of Swift Galey).

²⁵ U.S.-produced denim fabrics that earn export credits under the EIAP could be used to produce denim apparel in the Dominican Republic that is eligible for duty-free treatment in the United States under the standard CAFTA-DR provisions.

CHAPTER 3

Recommendations for Improvements in the Earned Import Allowance Program

Overview

During its investigation, the Commission sought comments on the EIAP and recommendations for improvements to the program via a *Federal Register* notice, scheduling of a public hearing, and interviews with industry representatives. Although the Commission's public hearing was canceled for lack of interest, three written submissions were received from interested parties. In addition, Commission staff attempted to contact over 30 entities, including all registered users of the EIAP as well as all U.S. fabric firms with a potential interest in the program, for their recommendations regarding possible improvements to the EIAP. Recommendations offered during the second annual review of the EIAP were consistent with those received by the Commission during the program's first annual review. These include lowering the 2-for-1 ratio of U.S. to foreign fabric; including other types of fabrics and apparel items in the EIAP; expanding the program to other CAFTA-DR members; and changing the requirement that dyeing and finishing of eligible fabrics take place in the United States.

Recommendations for Improvements

Lowering Ratio to 1-for-1

Industry sources representing the Dominican apparel industry reiterated the desire to see the statutory ratio for the EIAP changed from 2-for-1 to 1-for-1, similar to the Nicaragua earned import allowance program. According to Dominican producers, Nicaragua, as well as other countries that enjoy more favorable trade preference programs, have a significant competitive advantage over the Dominican Republic.¹ These sources stated that changing the EIAP to 1-for-1 would increase flexibility for Dominican producers, spur a resurgence in apparel production in the Dominican Republic, and eventually raise demand for U.S. fabrics. Under the current ratio, some producers indicated that the cost differential between U.S. and foreign fabrics, the availability of U.S. fabrics, and the challenges associated with balancing 2 units of one fabric with 1 unit of another make it difficult for firms to plan product development and production under the EIAP and therefore keep the program from being cost effective.² For example, at the time the first annual report was prepared, a pair of pants produced under a 2-for-1 U.S. to foreign fabric ratio reportedly cost roughly 10 cents more than the same pair of pants produced under a 1-for-1 ratio, a notable difference in an industry that competes on small

¹ Dominican apparel industry representative, telephone interview by USITC staff, March 31, 2011.

² U.S. apparel industry representative, telephone interview by USITC staff, February 24, 2011.

incremental differences in price.³ Since then, global fabric prices have increased, and although the cost differential between U.S. and foreign cotton fabrics has reportedly narrowed, U.S.-finished fabrics allegedly still cost roughly \$0.50–\$1.00 more per linear yard than foreign-produced fabrics.⁴

U.S. and Dominican apparel industry representatives and Dominican government representatives suggested that a 1-for-1 ratio would allow producers in the Dominican Republic to more effectively use the program and stay in business. Sources reported that without a robust garment industry in the Dominican Republic, Dominican demand for fabrics, whatever the source, will wane; however, a strong sewing base in the Dominican Republic will naturally drive up demand, including demand for U.S.-produced fabrics.⁵ Nonetheless, in commenting on the suggested ratio change, one U.S. industry source cautioned that such a change should only be made if it is supported by the majority of the U.S. textile industry and if it were deemed beneficial to U.S. industry.⁶

Program Expansion

A number of U.S. and Dominican apparel industry representatives indicated they would support expansion of the types of eligible fabrics and apparel items covered under the EIAP and suggested that the program might be more widely used if such changes were adopted. A Dominican government source agreed, proposing that additional fabrics be added to the program, without specifying particular fibers or construction.⁷

Several apparel companies expressed interest in adding denim apparel to the EIAP. Currently, although Dominican apparel producers may purchase U.S. denim and receive credits under the EIAP, denim bottoms produced in the Dominican Republic are not eligible to enter the United States free of duty under the program. According to one firm, if denim apparel were included under the EIAP, its use of the program would expand significantly.⁸ Another firm requested that the program be expanded to include additional types of garments, specifically coveralls.⁹ In addition, one representative suggested that the EIAP should be expanded to include other CAFTA countries, which would reportedly encourage increased garment manufacturing in the Western Hemisphere and boost total demand for U.S. fabrics.¹⁰

A representative of the U.S. textile industry suggested that consideration of extension or expansion proposals should be thorough, as such changes could impact market dynamics and potentially harm U.S. fabric exports. The source stated that other fabrics currently produced in the United States should definitely not be added to the program because of the potential effect on U.S. producers, and that any changes to the EIAP should not occur

³ D'Clase, written submission to the USITC, December 2, 2009; USITC hearing transcript, November 18, 2009, 80, 85 (testimony by Steven Litton, director, D'Clase Apparel International). See table 2.2 for a comparison of the average cost of cotton pants made in the Dominican Republic under different import scenarios.

⁴ U.S. apparel industry representatives, telephone interview by USITC staff, February 24, 2011, and April 4, 2011.

⁵ U.S. apparel industry representative, telephone interview by USITC staff, February 24, 2011; Dominican government representative, telephone interview by USITC staff, April 12, 2011.

⁶ U.S. textile industry representative, interview by USITC staff, April 5, 2011.

⁷ Dominican government representative, telephone interview by USITC staff, April 18, 2011.

⁸ Dominican apparel industry representative, telephone interview by USITC staff, April 25, 2011.

⁹ Dominican apparel industry representative, telephone interview by USITC staff, April 4, 2011.

¹⁰ U.S. apparel industry representative, telephone interview by USITC staff, February 24, 2011.

at the request of one or two companies; rather, the interests and opinions of all affected and interested parties should be carefully weighed.¹¹

Interpretation of “Wholly Formed”

Although the Department of Commerce has determined that with respect to the EIAP, the term “wholly formed” requires all dyeing, finishing, and printing of eligible fabrics to take place in the United States, several U.S. and Dominican apparel industry representatives continue to recommend that dyeing and finishing operations be allowed to occur in other countries. According to one producer, Fishman & Tobin, if firms were permitted to buy U.S. greige fabric under the program and have it dyed and finished in CAFTA-DR countries, the company would reexamine its purchasing decisions, and there would likely be an increase in the use of U.S. greige goods. This firm went on to indicate that in the past, it has purchased U.S. greige fabric that was dyed and finished in Nicaragua,¹² made into apparel, and then shipped back to the United States free of duty under CAFTA-DR. Because the 2-for-1 program does not allow a firm to receive credits for U.S. greige fabric, the firm is currently purchasing fabric from China and Pakistan, as such fabrics are cheaper than U.S. “wholly formed” goods.¹³ As noted earlier, another user of the EIAP, D’Clase, stated that since the program remains unchanged and suggestions put forth during the first annual review were not adopted, including the recommendation that purchases of U.S. greige fabrics qualify for credits, the company has had to close two facilities in the Dominican Republic and lay off 1,600 employees.¹⁴

AMTAC cited opposition to any alteration of the “wholly formed” requirement, noting that the Department of Commerce’s mandate that all finishing operations must take place in the United States is a decision that supports U.S. textile jobs and is consistent with the intent of Congress in creating the EIAP.¹⁵ Dyeing, finishing, and printing account for a significant percentage of the cost of a fabric, and in the United States, these operations support 40,000 jobs. In addition, since the U.S. textile industry is particularly competitive in dyeing and finishing, this sector has kept other upstream textile jobs—namely employment in knitting and weaving—in the United States.¹⁶ There would reportedly be strong opposition to renewal of the EIAP from U.S. textile firms if the current interpretation of “wholly formed” were to be changed.

¹¹ U.S. textile industry representative, interview by USITC staff, April 5, 2011.

¹² During the Commission’s first annual review of the EIAP, it was pointed out that the U.S. dyeing and finishing requirement under the EIAP is inconsistent with requirements under other similar programs such as the Nicaragua 1-for-1 program. Sandler, Travis & Rosenberg, written submission to the USDOC, March 20, 2009; Hon. Charles B. Rangel and Hon. Dave Camp, written submission to the USDOC, May 4, 2009.

¹³ Fishman & Tobin, Inc. written submission to the USITC, February 23, 2011.

¹⁴ D’Clase Apparel International, written submission to the USITC, March 3, 2011.

¹⁵ AMTAC, written submission to the USITC, April 1, 2011.

¹⁶ U.S. textile industry representative, interview by USITC staff, April 5, 2011.

CHAPTER 4

Positions of Interested Parties

This chapter provides a summary of principal points made in submissions from interested parties. The views summarized here are those of the organizations filing the submissions and not those of the Commission.¹ The Commission received three written submissions from interested parties: The American Manufacturing Trade Action Coalition; D'Clase Apparel International; and Fishman & Tobin, Inc.

American Manufacturing Trade Action Coalition²

In a written submission to the Commission, the American Manufacturing Trade Action Coalition (AMTAC) reported that it is a coalition of U.S.-based manufacturers, whose membership largely consists of domestic textile and apparel producers, including companies that dye, finish, and/or print fabric in the United States. AMTAC stated that it has a direct interest in the EIAP due to the commercial activities of its members. According to AMTAC, imports of woven cotton bottoms from the Dominican Republic under the EIAP amounted to \$33.1 million in 2010, reflecting an increase of 23 percent over the 2009 total.

AMTAC indicated that it supported the creation of the EIAP to increase the competitiveness of its customers in the Dominican Republic and said that dyeing, finishing, and printing operations were understood to be part of the definition of “wholly formed.”³ AMTAC also stated that it supported the July 2010 determination by OTEXA that defined “wholly formed” to require that “all production processes and finishing operations take place in the United States.”⁴ According to AMTAC, this decision by OTEXA supports U.S. textile jobs and is consistent with the original intent of the legislation when it was drafted by Congress. AMTAC cited testimony of a former Chief Textile Negotiator for the United States Trade Representative at the Commission hearing on November 18, 2009, supporting the view that the program intended that the fabric be dyed, finished, and printed in the United States.

AMTAC asserted that “dyeing, finishing, and printing is the highest value-added process in the production of fabric,” and is a strength of the U.S. textile industry.⁵ According to AMTAC, this sector employs 38,000 U.S. workers and allows U.S. weavers the flexibility to remain competitive. AMTAC asserted that the support of the U.S. textile industry for the EIAP is contingent upon the requirement that dyeing, finishing, and printing occur in the United States, and indicated that without this provision, the U.S. industry would “actively oppose” a renewal of the program.⁶

¹ Commission staff did not undertake to confirm the accuracy of or otherwise correct the information described. For the full text of the written submissions, see entries associated with investigation no. 332-503 at the Commission’s Electronic Docket Information System (<https://edis.usitc.gov/edis3-internal/app>).

² AMTAC, written submission to the USITC, April 1, 2011.

³ AMTAC, written submission to the USITC, April 1, 2011, 2.

⁴ AMTAC, written submission to the USITC, April 1, 2011, 2.

⁵ AMTAC, written submission to the USITC, April 1, 2011, 2.

⁶ AMTAC, written submission to the USITC, April 1, 2011, 3.

AMTAC characterized the EIAP as “relatively new” and pointed out that the current data reflect the global economic downturn. As a result, AMTAC urged gathering more data before a decision is made on the merits of extending or expanding the program.⁷

D’Class Apparel International⁸

D’Class Apparel International (D’Class) said that it is a manufacturer of bottoms in the Dominican Republic that is currently exporting to the United States.⁹ In its written submission to the Commission, D’Class stated that the Dominican Republic is the largest CAFTA-DR exporter of bottoms to the United States. D’Class characterized the 2-for-1 provision of the EIAP as “very important for [them],” both “today and in the future” because it allows the company to use foreign fabric and still export bottoms to the United States duty free.¹⁰

D’Class stated it had offered two suggestions for amendments or changes to the EIAP in connection with the first annual report: change the 2-for-1 provision to a 1-for-1 provision, and allow U.S. greige fabrics to be finished anywhere in the CAFTA-DR region in order to qualify for export credits. D’Class reported that because these changes were not made, it has shut down two manufacturing facilities and laid off 1,600 workers since its submission and testimony presented in connection with the first annual report.¹¹ D’Class explained that several of its customers ran out of credits under the EIAP, and as a result, D’Class products were no longer competitively priced.

D’Class requested that the modifications it suggested in the first annual review be made to the EIAP. It indicated that these changes would allow it to use more U.S. greige fabric and as well as U.S. pocketing fabrics and other apparel sundries. The company stated that it is at risk of closing operations for good without modifications to the EIAP.

Fishman & Tobin, Inc.¹²

In a written submission to the Commission, Fishman & Tobin, Inc. (Fishman & Tobin) reported that it is a privately owned corporation based in Pennsylvania that manufactures boy’s dresswear and school uniforms. Fishman & Tobin stated that it owns factories in the Dominican Republic and currently employs approximately 2,000 people there. Fishman & Tobin indicated that it also uses outside contractors in the CAFTA-DR region.¹³

Fishman & Tobin expressed concern that the interpretation of “wholly formed” in the EIAP has been “mistakenly defined” to require that dyeing and finishing operations take place in the United States in order to qualify for the program.¹⁴ It stated that because of this interpretation, the program has not been an important factor in its business. Fishman

⁷ AMTAC, written submission to the USITC, April 1, 2011, 3.

⁸ D’Class, written submission to the USITC, March 3, 2011, 1.

⁹ USITC, hearing transcript, November 18, 2009, 18.

¹⁰ D’Class, written submission to the USITC, March 3, 2011, 1.

¹¹ USITC, hearing transcript, November 18, 2009; D’Class, written submission to the USITC, December 2, 2009.

¹² Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011.

¹³ Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011, 1.

¹⁴ Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011, 1.

& Tobin said that “well over 95 percent” of its purchases of fabrics are from non-U.S. suppliers, owing to the lower cost of Asian fabric. It stated that the 2-for-1 program is not sufficient to offset the higher cost of buying U.S. wholly formed fabrics. Fishman & Tobin stated that while it is currently sourcing fabric from China and Pakistan, a change to allow greige goods from the United States to be dyed and finished in a CAFTA-DR country under the EIAP would “in many instances” result in the use of U.S. fabric rather than Asian fabric.¹⁵

In order to increase the effectiveness of the EIAP, Fishman & Tobin suggested that the 2-for-1 provision be changed to something less restrictive (i.e., 1-for-1), and that this would result in a “surge in the use of U.S. greige goods” for apparel production in the Dominican Republic. Fishman & Tobin concluded by stating that if no changes are made to the EIAP, garment production will continue to move out of the region, hastening the recent “severe decline” in the Dominican apparel industry.¹⁶

¹⁵ Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011, 1.

¹⁶ Fishman & Tobin, Inc., written submission to the USITC, February 23, 2011, 2.

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_____. *Textiles and Apparel: Effects of Special Rules for Haiti on Trade Markets and Industries*. USITC Publication 4061. Washington, DC: USITC, 2008.
<http://www.usitc.gov/publications/332/pub4016.pdf>.

APPENDIX A

Section 2 of Public Law 110-436



PUBLIC LAW 110-436—OCT. 16, 2008

ANDEAN TRADE PREFERENCE EXTENSION

Public Law 110-436
110th Congress

An Act

Oct. 16, 2008
[H.R. 7222]

To extend the Andean Trade Preference Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF ANDEAN TRADE PREFERENCE ACT.

(a) EXTENSION.—Section 208 of the Andean Trade Preference Act (19 U.S.C. 3206) is amended to read as follows:

President.

Foreign
countries.
Time period.
Reports.
Deadline.

“SEC. 208. TERMINATION OF PREFERENTIAL TREATMENT.

“(a) IN GENERAL.—No duty-free treatment or other preferential treatment extended to beneficiary countries under this title shall—

“(1) remain in effect with respect to Colombia or Peru after December 31, 2009;

“(2) remain in effect with respect to Ecuador after June 30, 2009, except that duty-free treatment and other preferential treatment under this title shall remain in effect with respect to Ecuador during the period beginning on July 1, 2009, and ending on December 31, 2009, unless the President reviews the criteria set forth in section 203, and on or before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

“(A) the President has determined that Ecuador does not satisfy the requirements set forth in section 203(c) for being designated as a beneficiary country; and

“(B) in making that determination, the President has taken into account each of the factors set forth in section 203(d); and

“(3) remain in effect with respect to Bolivia after June 30, 2009, except that duty-free treatment and other preferential treatment under this title shall remain in effect with respect to Bolivia during the period beginning on July 1, 2009, and ending on December 31, 2009, only if the President reviews the criteria set forth in section 203, and on or before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

“(A) the President has determined that Bolivia satisfies the requirements set forth in section 203(c) for being designated as a beneficiary country; and

“(B) in making that determination, the President has taken into account each of the factors set forth in section 203(d).

“(b) **REPORTS.**—On or before June 30, 2009, the President shall make determinations pursuant to subsections (a)(2)(A) and (a)(3)(A) and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on—

- “(1) such determinations; and
- “(2) the reasons for such determinations.”.

(b) **TREATMENT OF CERTAIN APPAREL ARTICLES.**—Section 204(b)(3) of such Act (19 U.S.C. 3203(b)(3)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) in subclause (II), by striking “6 succeeding 1-year periods” and inserting “7 succeeding 1-year periods”; and

(ii) in subclause (III)(bb), by striking “and for the succeeding 1-year period” and inserting “and for the succeeding 2-year period”; and

(B) in clause (v)(II), by striking “5 succeeding 1-year periods” and inserting “6 succeeding 1-year periods”; and

(2) in subparagraph (E)(ii)(II), by striking “December 31, 2008” and inserting “December 31, 2009”.

SEC. 2. EARNED IMPORT ALLOWANCE PROGRAM.

(a) **IN GENERAL.**—Title IV of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109-53; 119 Stat. 495) is amended by adding at the end the following:

“SEC. 404. EARNED IMPORT ALLOWANCE PROGRAM.

19 USC 4112.

“(a) **PREFERENTIAL TREATMENT.**—

“(1) **IN GENERAL.**—Eligible apparel articles wholly assembled in an eligible country and imported directly from an eligible country shall enter the United States free of duty, without regard to the source of the fabric or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate that reflects the amount of credits equal to the total square meter equivalents of fabric in such apparel articles, in accordance with the program established under subsection (b).

“(2) **DETERMINATION OF QUANTITY OF SME.**—For purposes of determining the quantity of square meter equivalents under paragraph (1), the conversion factors listed in ‘Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008’, or its successor publications, of the United States Department of Commerce, shall apply.

Applicability.

“(b) **EARNED IMPORT ALLOWANCE PROGRAM.**—

“(1) **ESTABLISHMENT.**—The Secretary of Commerce shall establish a program to provide earned import allowance certificates to any producer or entity controlling production of eligible apparel articles in an eligible country for purposes of subsection (a), based on the elements described in paragraph (2).

“(2) **ELEMENTS.**—The elements referred to in paragraph (1) are the following:

“(A) One credit shall be issued to a producer or an entity controlling production for every two square meter equivalents of qualifying fabric that the producer or entity

controlling production can demonstrate that it has purchased for the manufacture in an eligible country of articles like or similar to any article eligible for preferential treatment under subsection (a). The Secretary of Commerce shall, if requested by a producer or entity controlling production, create and maintain an account for such producer or entity controlling production, into which such credits may be deposited.

“(B) Such producer or entity controlling production may redeem credits issued under subparagraph (A) for earned import allowance certificates reflecting such number of earned credits as the producer or entity may request and has available.

“(C) Any textile mill or other entity located in the United States that exports qualifying fabric to an eligible country may submit, upon such export or upon request, the Shipper’s Export Declaration, or successor documentation, to the Secretary of Commerce—

“(i) verifying that the qualifying fabric was exported to a producer or entity controlling production in an eligible country; and

“(ii) identifying such producer or entity controlling production, and the quantity and description of qualifying fabric exported to such producer or entity controlling production.

“(D) The Secretary of Commerce may require that a producer or entity controlling production submit documentation to verify purchases of qualifying fabric.

“(E) The Secretary of Commerce may make available to each person or entity identified in the documentation submitted under subparagraph (C) or (D) information contained in such documentation that relates to the purchase of qualifying fabric involving such person or entity.

“(F) The program shall be established so as to allow, to the extent feasible, the submission, storage, retrieval, and disclosure of information in electronic format, including information with respect to the earned import allowance certificates required under subsection (a)(1).

“(G) The Secretary of Commerce may reconcile discrepancies in the information provided under subparagraph (C) or (D) and verify the accuracy of such information.

“(H) The Secretary of Commerce shall establish procedures to carry out the program under this section by September 30, 2008, and may establish additional requirements to carry out the program.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘appropriate congressional committees’ means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;

“(2) the term ‘eligible apparel articles’ means the following articles classified in chapter 62 of the HTS (and meeting the requirements of the rules relating to chapter 62 of the HTS contained in general note 29(n) of the HTS) of cotton (but not of denim): trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts, and pants;

“(3) the term ‘eligible country’ means the Dominican Republic; and

Procedures.
Deadline.

“(4) the term ‘qualifying fabric’ means woven fabric of cotton wholly formed in the United States from yarns wholly formed in the United States and certified by the producer or entity controlling production as being suitable for use in the manufacture of apparel items such as trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts or pants, all the foregoing of cotton, except that—

“(A) fabric otherwise eligible as qualifying fabric shall not be ineligible as qualifying fabric because the fabric contains nylon filament yarn with respect to which section 213(b)(2)(A)(vii)(IV) of the Caribbean Basin Economic Recovery Act applies;

“(B) fabric that would otherwise be ineligible as qualifying fabric because the fabric contains yarns not wholly formed in the United States shall not be ineligible as qualifying fabric if the total weight of all such yarns is not more than 10 percent of the total weight of the fabric, except that any elastomeric yarn contained in an eligible apparel article must be wholly formed in the United States; and

“(C) fabric otherwise eligible as qualifying fabric shall not be ineligible as qualifying fabric because the fabric contains yarns or fibers that have been designated as not commercially available pursuant to—

“(i) article 3.25(4) or Annex 3.25 of the Agreement;

“(ii) Annex 401 of the North American Free Trade Agreement;

“(iii) section 112(b)(5) of the African Growth and Opportunity Act;

“(iv) section 204(b)(3)(B)(i)(III) or (ii) of the Andean Trade Preference Act;

“(v) section 213(b)(2)(A)(v) or 213A(b)(5)(A) of the Caribbean Basin Economic Recovery Act; or

“(vi) any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential treatment is made.

“(d) REVIEW AND REPORT.—

“(1) REVIEW.—The United States International Trade Commission shall carry out a review of the program under this section annually for the purpose of evaluating the effectiveness of, and making recommendations for improvements in, the program.

“(2) REPORT.—The United States International Trade Commission shall submit to the appropriate congressional committees annually a report on the results of the review carried out under paragraph (1).

“(e) EFFECTIVE DATE AND APPLICABILITY.—

“(1) EFFECTIVE DATE.—The program under this section shall be in effect for the 10-year period beginning on the date on which the President certifies to the appropriate congressional committees that sections A, B, C, and D of the Annex to Presidential Proclamation 8213 (December 20, 2007) have taken effect.

President.
Certification.

“(2) APPLICABILITY.—The program under this section shall apply with respect to qualifying fabric exported to an eligible country on or after August 1, 2007.”.

(b) CLERICAL AMENDMENT.—The table of contents for the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act is amended by inserting after the item relating to section 403 the following:

“Sec. 404. Earned import allowance program.”.

SEC. 3. AFRICAN GROWTH AND OPPORTUNITY ACT.

(a) IN GENERAL.—Section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721) is amended—

(1) in subsection (b)(6)(A), by striking “ethic” in the second sentence and inserting “ethnic”; and

(2) in subsection (c)—

(A) in paragraph (1), by striking “, and subject to paragraph (2),”;

(B) by striking paragraphs (2) and (3);

(C) in paragraph (4)—

(i) by striking “Subsection (b)(3)(C)” and inserting “Subsection (b)(3)(B)”; and

(ii) by redesignating such paragraph (4) as paragraph (2); and

(D) by striking paragraph (5) and inserting the following:

“(3) DEFINITION.—In this subsection, the term ‘lesser developed beneficiary sub-Saharan African country’ means—

“(A) 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;

“(B) Botswana;

“(C) Namibia; and

“(D) Mauritius.”.

(b) APPLICABILITY.—The amendments made by subsection (a) apply to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(c) REVIEW AND REPORTS.—

(1) ITC REVIEW AND REPORT.—

(A) REVIEW.—The United States International Trade Commission shall conduct a review to identify yarns, fabrics, and other textile and apparel inputs that through new or increased investment or other measures can be produced competitively in beneficiary sub-Saharan African countries.

(B) REPORT.—Not later than 7 months after the date of the enactment of this Act, the United States International Trade Commission shall submit to the appropriate congressional committees and the Comptroller General a report on the results of the review carried out under subparagraph (A).

(2) GAO REPORT.—Not later than 90 days after the submission of the report under paragraph (1)(B), the Comptroller General shall submit to the appropriate congressional committees a report that, based on the results of the report submitted

19 USC 3721
note.

under paragraph (1)(B) and other available information, contains recommendations for changes to United States trade preference programs, including the African Growth and Opportunity Act (19 U.S.C. 3701 et seq.) and the amendments made by that Act, to provide incentives to increase investment and other measures necessary to improve the competitiveness of beneficiary sub-Saharan African countries in the production of yarns, fabrics, and other textile and apparel inputs identified in the report submitted under paragraph (1)(B), including changes to requirements relating to rules of origin under such programs.

(3) DEFINITIONS.—In this subsection—

(A) the term “appropriate congressional committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) the term “beneficiary sub-Saharan African countries” has the meaning given the term in section 506A(c) of the Trade Act of 1974 (19 U.S.C. 2466a(c)).

(d) CLERICAL AMENDMENT.—Section 6002(a)(2)(B) of Public Law 109-432 is amended by striking “(B) by striking” and inserting “(B) in paragraph (3), by striking”. 19 USC 3721.

SEC. 4. GENERALIZED SYSTEM OF PREFERENCES.

Section 505 of the Trade Act of 1974 (19 U.S.C. 2465) is amended by striking “December 31, 2008” and inserting “December 31, 2009”.

SEC. 5. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended—

(1) in subparagraph (A), by striking “November 14, 2017” and inserting “February 14, 2018”; and

(2) in subparagraph (B)(i), by striking “October 7, 2017” and inserting “January 31, 2018”.

(b) REPEAL.—Section 15201 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246) is amended by striking subsections (c) and (d). *Ante*, p. 2262.

SEC. 6. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 2 percentage points. 26 USC 6655 note.

SEC. 7. TECHNICAL CORRECTIONS.

Section 15402 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246) is amended—

(1) in subsections (a) and (b), by striking “Carribbean” each place it appears and inserting “Caribbean”; and *Ante*, p. 2289.

(2) in subsection (d), by striking “231A(b)” and inserting “213A(b)”.

Approved October 16, 2008.

LEGISLATIVE HISTORY—H.R. 7222:

CONGRESSIONAL RECORD, Vol. 154 (2008):

Sept. 29, considered and passed House.

Oct. 2, considered and passed Senate, amended.

Oct. 3, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 44 (2008):

Oct. 16, Presidential remarks.



APPENDIX B

Commission's *Federal Register* Notice of Institution

involvement in the decision-making process.

Copies of the Record of Decision may be obtained from the contact listed above or online at <http://parkplanning.nps.gov/CUGA>.

Authority: The authority for publishing this notice is 40 C.F.R. 1506.6.

The responsible official for this Record of Decision is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: January 24, 2011.

Gordon Wissinger,

Acting, Regional Director, Southeast Region.

[FR Doc. 2011-2308 Filed 2-1-11; 8:45 am]

BILLING CODE 4310-NX-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-503]

Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel From the Dominican Republic; Second Annual Report

AGENCY: United States International Trade Commission.

ACTION: Notice of public hearing and opportunity to provide testimony and written comments in connection with the Commission's second annual report.

SUMMARY: The U.S. International Trade Commission (Commission) has announced its schedule, including the date for the public hearing and deadlines for filing briefs and other written submissions, in connection with the preparation of its second annual report in investigation No. 332-503, *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic*.

DATES:

March 3, 2011: Deadline for filing requests to appear at the public hearing.

March 8, 2011: Deadline for filing pre-hearing briefs and statements.

March 22, 2011: Public hearing.

April 1, 2011: Deadline for filing post-hearing briefs and statements and all other written submissions.

July 22, 2011: Transmittal of second report to House Committee on Ways and Means and Senate Committee on Finance.

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, including requests to appear at the hearing, statements, and briefs, 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) 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: Section 404 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (DR-CAFTA Act) (19 U.S.C. 4112) required the Secretary of Commerce to establish an Earned Import Allowance Program (EIAP) and directed the Commission to conduct annual reviews of the program for the purpose of evaluating its effectiveness and making recommendations for improvements. Section 404 of the DR-CAFTA Act authorizes certain apparel articles wholly assembled in an eligible country to enter the United States free of duty if accompanied by a certificate that shows evidence of the purchase of certain U.S. fabric. The term "eligible country" is defined to mean the Dominican Republic. More specifically, the program allows producers (in the Dominican Republic) that purchase a certain quantity of qualifying U.S. fabric for use in the production of certain bottoms of cotton in the Dominican Republic to receive a credit that can be used to ship a certain quantity of eligible apparel using third country fabrics from the Dominican Republic to the United States duty free.

Section 404(d) directs the Commission to conduct an annual review of the program for the purpose of evaluating the effectiveness of the program and making recommendations for improvements. The Commission is required to submit its reports to the House Committee on Ways and Means and the Senate Committee on Finance. The Commission submitted its first annual report (USITC Publication 4175) on July 28, 2010 and expects to submit its second report to the committees by July 22, 2011.

The Commission instituted this investigation pursuant to section 332(g) of the Tariff Act of 1930 to facilitate docketing of submissions and also to facilitate public access to Commission records through the Commission's EDIS electronic records system.

Public Hearing: A public hearing in connection with this second report will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC beginning at 9:30 a.m. on March 22, 2011. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., March 3, 2011, 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 8, 2011; and all post-hearing briefs and statements responding to matters raised at the hearing should be filed not later than 5:15 p.m., April 1, 2011. If, at the close of business on March 3, 2011, 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 non-participant may call the Secretary (202-205-2000) after March 3, 2011, to determine whether the hearing will be held.

Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary and must conform to 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. If 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 to 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 is 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 intends to publish only a public report in this investigation. Consequently, the report that the Commission sends to the committees will not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing its report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: January 26, 2011.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–2217 Filed 2–1–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1089 (Review)]

Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on certain orange juice from Brazil.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on certain orange juice from Brazil would be likely to lead to continuation or recurrence of

material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is March 3, 2011. Comments on the adequacy of responses may be filed with the Commission by April 18, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* February 1, 2011.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On March 9, 2006, the Department of Commerce issued an antidumping duty order on imports of certain orange juice from Brazil (71 FR 12183). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available,

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–238, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Brazil.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as consisting of conventional FCOJM, conventional NFC, organic FCOJM, and organic NFC, coextensive with Commerce's scope.²

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as both orange growers and all domestic extractors/processors of certain orange juice.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is March 9, 2006.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they

² FCOJM stands for frozen concentrated orange juice for further manufacturing and NFC stands for conventional pasteurized single strength orange juice which has not been concentrated, typically referred to as not-from-concentrate.