

United States International Trade Commission

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

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 first annual review of the Earned Import Allowance Program (EIAP) for the Dominican Republic as required by section 404(d) of the Dominican Republic–Central America–United States Free Trade Implementation Act, as amended (the Act) (19 U.S.C. 4112(d)). The program, which is administered by the 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 that shows evidence of the purchase of certain U.S. fabric. To date, there has been limited use of the EIAP, and industry sources indicated potential to improve the program that could spur greater interest going forward. Nonetheless, the EIAP has reportedly benefited a handful of U.S. and Dominican firms, particularly U.S. firms that dye and finish fabric and Dominican producers of apparel items eligible under the program.

The EIAP provides an uncapped benefit for duty-free imports of 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”) assembled in the Dominican Republic from foreign fabric, provided such imports 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 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 manufacture and importation of apparel using non-qualifying fabric. Nine companies are currently registered to use the EIAP, and the first imports into the United States under the program entered in April 2009.

Sources indicate that the EIAP was designed to strengthen trade relations between the United States and the Dominican Republic by improving Dominican apparel firms' competitiveness in the U.S. market while creating export opportunities for U.S. fabric producers. During the past few years, the apparel industry in the Dominican Republic, which is an important sector with respect to employment and export revenues, has faced considerable competitive challenges and pressures in supplying the U.S. market, as evidenced by declining exports of woven cotton bottoms to the United States. Similarly, the U.S. textile industry supplying Dominican apparel producers has experienced a number of U.S. plant closures and declining cotton fabric production and exports in recent years.

Evaluation of the EIAP

Information available to the Commission indicates that to date, the EIAP has had some initial beneficial effect on the relevant U.S. and Dominican industries. Although the program was implemented in December 2008, there was a lag between the effective date of the provisions and the first imports under the program in April 2009. Only one full year of imports has been recorded under the EIAP, and much of the initial assessment of the program is based on anecdotal information, as outlined below:

- The EIAP has reportedly helped slow job losses and production declines in the Dominican industry that makes woven cotton bottoms. There were no reports of new investment as a result of the program.
- Dominican apparel manufacturers and U.S. apparel companies that import woven cotton bottoms from the Dominican Republic indicated that the EIAP allowed them to be more cost-competitive by permitting duty-free treatment for woven cotton bottoms made from lower-cost foreign fabrics.
- The U.S. producers that have benefited most from the EIAP are U.S. textile firms that have dyed and finished fabrics woven in third countries. Dominican woven cotton bottoms made with these fabrics are eligible for duty-free treatment through the redemption of foreign fabric credits.
- As of May 2010, no U.S. firms reported increased sales or exports of domestically woven fabrics as a result of the EIAP; one U.S. producer indicated that it expected to receive new orders soon.
- Reports on planned use of the program going forward have been mixed, as some Dominican apparel manufacturers and U.S. apparel firms that import woven cotton bottoms from the Dominican Republic indicate the program may no longer be cost-effective once the existing credits are depleted. A few of the firms indicated that they may move production out of the Dominican Republic if it is no longer economical to produce there.

Recommendations concerning the EIAP

During the investigation, the Commission received recommendations from industry and other sources concerning possible improvements to the EIAP. Recommendations were generally of two types: (1) improvements to the legislation that provides for the program; and (2) improvements in how the U.S. Department of Commerce implements the program. Industry sources postulated that the extent to which such improvements are implemented would affect the degree to which the program is used in the future.

Recommendations for Legislative Improvements

- **Change in ratio to “1 for 1”:** Industry representatives suggested changing the ratio for the EIAP to 1 for 1, similar to the Nicaragua earned import allowance program. A change in the ratio would reportedly allow Dominican apparel producers to enhance their offerings to U.S. customers and result in overall cost savings for these firms.
- **Program expansion:** A number of sources suggested adding cotton polyester blended fabrics, including polyester cotton twill fabrics, as well as broadwoven fabrics such as poplin fabrics, to the program, along with denim apparel and/or other apparel items. Some industry representatives also suggested extending the program to other Central American Free Trade Agreement countries.

Recommendations Relating to Implementation Improvements

- **Definition of “wholly formed”:**¹ The most controversial issue concerning the EIAP has been the interpretation of the term “wholly formed” fabrics which, as currently applied, requires that fabrics purchased under the program be dyed and finished in the United States. Users of the EIAP operating in or sourcing from the Dominican Republic overwhelmingly recommend that the current interpretation be changed to allow dyeing and finishing in other countries, particularly Nicaragua. Representatives of the U.S. textile industry, however, generally oppose any change to the existing interpretation, asserting that the U.S. industry would be adversely affected.
- **Education, facilitation, and administration:** Some firms suggested increasing outreach, education, and training for existing and potential users, especially smaller companies, to encourage greater program usage.

¹ See section 404 (c)(4) of the Act and 19 U.S.C. 4112(c)(4).

CHAPTER 1

Introduction

Congress provided for creation of the Earned Import Allowance Program (EIAP) for the Dominican Republic for the purpose of bolstering trade between the United States and the Dominican Republic through provisions that would assist the Dominican apparel sector, while creating incentives to boost purchases of U.S. fabric.¹ Apparel made in the Dominican Republic with 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. Under the program, when Dominican apparel producers purchase qualifying U.S. fabric for apparel production in the Dominican Republic, they receive credits that can be used to ship a certain amount of eligible apparel from the Dominican Republic to the United States free of duty, regardless of the origin of the fabric from which the apparel was made. The preferential treatment granted by the EIAP is limited to woven cotton bottoms, while the U.S. fabrics eligible for credit accrual under the program are woven cotton fabrics suitable for use in the aforementioned garments.

The Commission instituted investigation No. 332-503, *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic* on April 29, 2009,² for the purpose of preparing the reports required by section 404(d) of the Dominican Republic–Central America–United States Free Trade Implementation Act, as amended (the Act) (19 U.S.C. 4112(d)).³ This is the Commission’s first annual report under section 404(d). The report evaluates the program’s effectiveness in terms of 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 with respect to production and investment. The report also presents a compilation of recommendations for improvements to the program.

¹ USITC hearing transcript, November 18, 2009, 6–8 (testimony of Scott Quesenberry, former special textile negotiator, United States Trade Representative); Hon. Charles B. Rangel, chairman, Committee on Ways and Means and Hon. Dave Camp, ranking member, Committee on Ways and Means, letter to Gary Locke, Secretary of Commerce, May 4, 2009; Helga Ying, director, Worldwide Government Affairs and Public Policy, Levi Strauss & Co., letter to Janet Heinzen, director, Office of Textiles and Apparel, U.S. Department of Commerce, May 4, 2009; Stephen Lamar, executive vice president, American Apparel and Footwear Association, letter to Janet Heinzen, director, Office of Textiles and Apparel, U.S. Department of Commerce, May 4, 2009.

² See app. B for a copy of the *Federal Register* notice announcing the Commission’s institution of the investigation.

³ 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. The amendment did not specify when the Commission should deliver its first report. The Commission timed completion of its first report to allow sufficient time for industry to provide input and for full year trade data to become available. The text of the amendment is set forth in app. A of this report.

Scope and Approach

The report examines available information on the Dominican apparel industry, including the types of garments manufactured in the Dominican Republic, and statistics on trade between the Dominican Republic and the United States. The report provides an assessment of the effectiveness of the program from its inception, suggested changes or improvements to the program, and a summary of the positions of interested parties. In addition to available trade data and published materials on the Dominican industry and textiles and apparel trade, information was obtained through written submissions, as well as testimony from the Commission's hearing on the investigation, held November 18, 2009. Commission staff also conducted in-depth personal and telephone interviews with representatives of companies, industry associations, and government organizations to obtain information about 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.

Legislative Overview and Description of the EIAP

Section 404 of the Act provides for preferential treatment for eligible apparel articles under an “earned import allowance program.”⁴ Specifically, section 404 (a)(1) of the Act states that “[e]ligible apparel articles wholly assembled in an eligible country [defined as the Dominican Republic] 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.” Section 404 (b)(2)(a) goes on to specify that for every 2 square meters equivalent (SMEs) of qualifying U.S. fabric purchased by manufacturers for the production of apparel in the Dominican Republic, a 1-SME credit is issued that can be used in the manufacture of apparel using non-qualifying fabric (third-country fabric) that can be shipped to the United States free of duty under the program (figure 1). The EIAP, which is commonly referred to as the “2 for 1” program, is similar to earned import allowance programs that the United States has with Nicaragua (1 for 1) and Haiti (2 for 1).⁵ Like the Haiti 2 for 1 program, the benefit under the Dominican Republic EIAP is uncapped, meaning that there is no limit to the amount of Dominican-made apparel that can enter the United States under the program. This benefit differs from the Nicaragua earned import allowance program, which currently has an annual cap of 50 million SMEs.⁶

On November 25, 2008, the President of the United States issued Proclamation 8323⁷ stating that prerequisites for preferential treatment under the EIAP had been met and

⁴ 19 U.S.C. 4112. Section 404 was added by section 2 of Public Law 110-436 (122 Stat. 4976) on October 16, 2008.

⁵ The Haiti Economic Lift Program Act of 2010 (section 6 of Public Law 111-171 (124 Stat. 1204) (May 24, 2010)) changed the ratio under the Haiti EIAP from 3 for 1 to 2 for 1.

⁶ The three programs also differ in terms of scope. The Nicaragua 1 for 1 program applies only to trousers of cotton or manmade fiber fabrics, while the Haiti 2 for 1 program includes all apparel (both knit and woven). In addition, administration of the Nicaragua 1 for 1 program is different than both the EAIP and the Haiti 2 for 1 program, which operate through online systems.

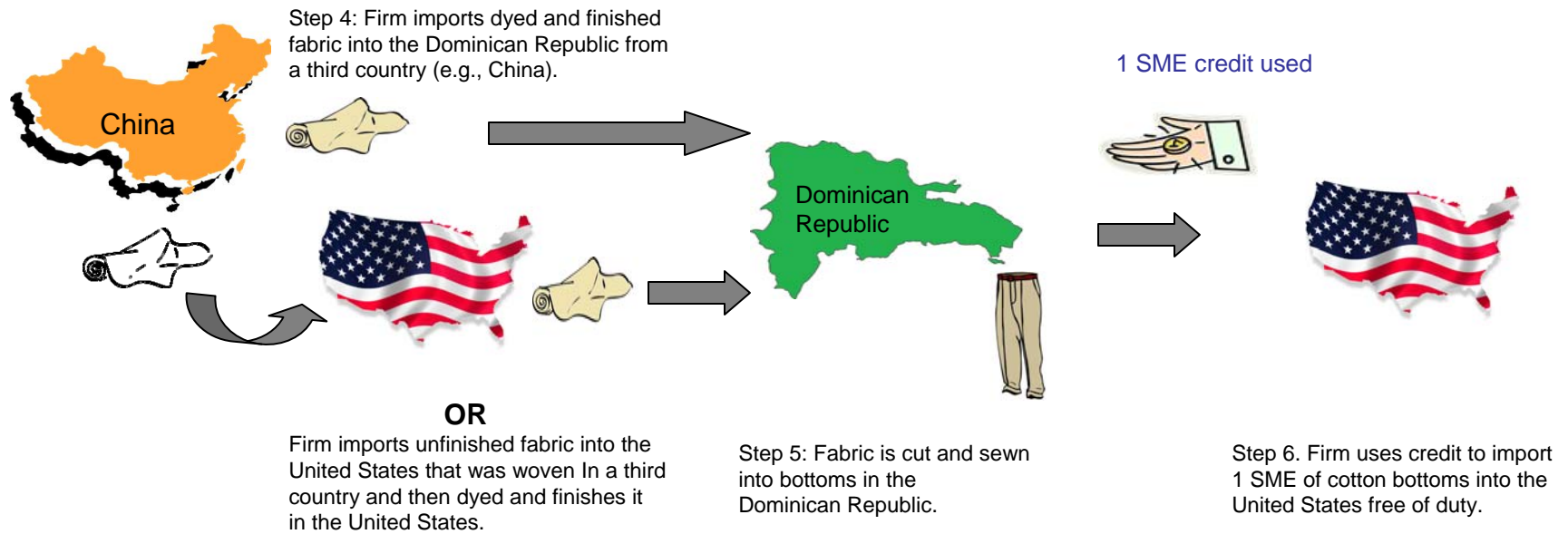
⁷ 73 Fed. Reg. 72677 (November 28, 2008).

Figure 1.1. Example of how the EIAP process works

Phase 1: Credit earned for purchases of U.S. fabric



Phase 2: Credit used to export cotton bottoms of third-country fabric to the United States



Source: Compiled by Commission staff.

implementing the program as of December 1, 2008.⁸ As specified in the Act, the program runs for a period of 10 years; however, section 404 (e)(2) permits credits to be claimed for qualifying fabric exported from the United States to the Dominican Republic retroactive to August 1, 2007. As a result, Dominican apparel producers may apply for and receive credits under the program for past purchases (occurring between August 1, 2007, and November 30, 2008) of eligible U.S. fabrics at a ratio of 1 credit issued for every 2 SMEs of fabric purchased. Reportedly, most of the credits issued under the EIAP to date have been credits for fabric purchases that took place before the program was implemented on December 1, 2008.⁹

The U.S. Department of Commerce's (Commerce) Office of Textiles and Apparel (OTEXA) currently administers the EIAP program. On January 21, 2009, OTEXA published interim regulations under the EIAP (retroactive to December 1, 2008) to set forth the procedures that OTEXA would follow in implementing and administering the program.¹⁰ OTEXA set up an interactive online system on its Web site for creating and maintaining accounts for credits. Qualifying apparel producers submit requests to open accounts, deposit credits, and request earned import allowance certificates through this online system, which works similarly to a checking account. The earned import allowance certificates issued by OTEXA are given in exchange for credits and accompany the eligible apparel articles wholly formed in the Dominican Republic and exported from the Dominican Republic to the United States under the program. In order to earn credits (which are redeemed for the aforementioned certificates), Dominican apparel producers must provide supporting information and proof of qualifying woven fabric purchases, including specifics about the type, amount, and source of the fabric, and documentation such as the purchase invoice from the U.S. mill, certificate of origin for the fabric, and shipper's export declaration indicating that the fabric was shipped to the Dominican Republic.

Product Description

Fabrics

The qualifying fabrics that may be purchased by Dominican apparel producers to receive credits under the program are defined in section 404 (c)(4) of the Act as 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" the eligible apparel articles. Neither the Act nor the interim regulations issued by OTEXA formally define the term "wholly formed." OTEXA currently interprets the term to mean that all production processes, starting with weaving, including dyeing and finishing, and ending with a fabric ready for cutting or assembly, must take place in the United States.¹¹ There is considerable disagreement and contention with respect to this interpretation, and OTEXA, which solicited public comments on the issue, reportedly intends to issue a final decision with respect to the definition of "wholly formed" at some time in the future.¹²

⁸ The provisions that were required to take effect are described in sections A, B, C, and D of the Annex to Presidential Proclamation 8213 of December 20, 2007 (72 Fed. Reg. 73555 (December 27, 2007)).

⁹ U.S. government official, interview by Commission staff, Washington, DC, April 13, 2010.

¹⁰ 74 Fed. Reg. 3563 (January 21, 2009).

¹¹ 74 Fed. Reg. 15255 (April 3, 2009).

¹² U.S. government official, interview by Commission staff, Washington, DC, April 13, 2010.

In addition, there is no publicly available definition for fabrics “suitable for use in the manufacture of” trousers, bib and brace overalls, breeches and shorts, and skirts and divided skirts or pants, and no correlation to the HTS has been published. It appears that the eligible fabrics encompass bottom-weight twills classified in chapter 52 of the HTS.¹³ Currently, 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, or containing less than 85 percent by weight of cotton and mixed mainly or solely with man-made fibers (HTS subheadings 5209.32.00 and 5211.32.00, respectively).¹⁴ Per section 404(c)(4) of the Act, eligible fabrics also include cotton fabrics containing nylon filament yarn or containing yarns deemed as commercially unavailable, and/or non-U.S. yarns, if the total weight of non-U.S. yarns is less than 10 percent of the total weight of the fabric.¹⁵ Although cotton denim bottoms are ineligible for duty-free treatment under the EIAP, denim is reportedly a qualifying fabric under the program.¹⁶

Apparel

The apparel products currently eligible for the preferential treatment granted under the EIAP are woven cotton (except denim) pants and trousers, bib and brace overalls, breeches and shorts, and skirts and divided skirts, classified in chapter 62 of the Harmonized Tariff Schedule of the United States (HTS).¹⁷ These apparel items are subject to Normal Trade Relations (NTR) duty rates ranging from free to 16.6 percent ad valorem. The apparel items eligible for duty-free entry under the program can be made from fabric of any origin (woven from yarns of any origin), and there is no restriction on where such fabrics are dyed and finished. The fabrics may be dyed and finished in the country of origin, another country, or the United States.

The subject apparel items are allowed entry collectively under HTS heading 9822.06.05, which provides for “[e]ligible apparel articles of chapter 62 assembled in the Dominican Republic and imported directly therefrom, under the terms of U.S. general note 27 to this subchapter.”¹⁸ Although the program was implemented at the end of 2008, the first entry under heading 9822.06.05 did not occur until April 2009. Data on imports under 9822.06.05 are not broken out by the specific types of woven cotton bottoms coming in under the program; therefore, it is impossible to discern the primary garments imported under the EIAP. However, data on total U.S. imports of woven cotton bottoms from the

¹³ USITC, hearing transcript, November 18, 2009, 62 (testimony of Scott Quesenberry, former special textile negotiator, United States Trade Representative); OTEXA, webinar, “Introduction to the Dominican Republic’s Two-for-One Earned Import Allowance Program,” March 11, 2009, 2.

¹⁴ U.S. government official, e-mail message to Commission staff, January 25, 2010. Twill weave is created by the warp yarn (yarn in the vertical position) crossing over two or more filling yarns (yarns in the horizontal position). The diagonal appearance is created by the warp yarn passing over two or more filling yarns. Hoechst Celanese, *Dictionary of Fiber & Textile Technology*, 1986, 168.

¹⁵ As noted in the definition of “qualifying fabric” in section 404(c)(4) of the Act.

¹⁶ USITC hearing transcript, November 18, 2009, 36 (testimony by José Manuel Torres, executive vice president, ADOZONA).

¹⁷ These products are imported under the following HTS statistical reporting numbers: 6203.22.3020, 6203.22.3030, 6203.42.1000, 6203.42.2005, 6203.42.2010, 6203.42.2025, 6203.42.2.50, 6203.42.2090, 6203.42.4003, 6203.42.4006, 6203.42.4016, 6203.42.4021, 6203.42.4026, 6203.42.4041, 6203.42.4046, 6203.42.4051, 6203.42.4056, 6203.42.4061, 6204.12.0020, 6204.12.0030, 6204.22.3030, 6204.22.3040, 6204.22.3050, 6204.52.2010, 6204.52.2020, 6204.52.2070, 6204.52.2080, 6204.62.1000, 6204.62.2005, 6204.62.2010, 6204.62.2025, 6204.62.2050, 6204.62.3000, 6204.62.4003, 6204.62.4006, 6204.62.4021, 6204.62.4026, 6204.62.4031, 6204.62.4046, 6204.62.4051, 6204.62.4056, 6204.62.4061, and 6204.62.4066.

¹⁸ U.S. note 27 to subchapter XXII of chapter 98 describes the garments eligible for the EIAP and conditions for claiming duty-free treatment under the heading.

Dominican Republic indicate that men's and boys' trousers and breeches of cotton (other than corduroy or blue denim) classified under statistical reporting number 6203.42.4016 account for 93 percent of imports in this category; therefore, it is likely that a significant portion of imports under the EIAP program are these products.¹⁹

¹⁹ These products are subject to the highest rates of duty (16.6 percent ad valorem) among the eligible products.

CHAPTER 2

U.S. and Dominican Industry and Trade

Background

Apparel manufacturing in the Dominican Republic, particularly of woven cotton bottoms, has been a significant source of employment and export revenues for that country for many years.¹ During the past decade, the Dominican industry has benefited from tariff preference programs with the United States, its largest apparel export market.² As the programs generally require the use of U.S. fabrics by Dominican apparel producers, the U.S. textile industry has also benefited through increased exports.³ Despite the trade preferences, however, during the past few years, textile and apparel trade between the United States and the Dominican Republic has declined.⁴ The Dominican trouser industry in particular has faced considerable pressures and has struggled to maintain its competitiveness in supplying the U.S. apparel market.⁵ Reportedly, there have been significant job losses in both countries, and the Dominican apparel sector has risked losing the economies of scale required to keep the industry viable—not just for pants producers, but also for the suppliers of apparel inputs.⁶

Dominican Apparel Industry

Industry Structure

The Dominican apparel industry primarily manufactures and exports mass-produced goods such as knit underwear that require relatively simple stitching work, and basic commodity products such as cotton pants and trousers. Dominican apparel production evolved in the 1990s because, like its Central American Free Trade Agreement neighbors, the Dominican Republic offered proximity to the U.S. market and a relatively low-cost, ample supply of apparel workers.⁷ The country eventually became known as “Dockers Island” as the production of pants for export to the United States, especially

¹ USITC hearing transcript, November 18, 2009, 13 (testimony of José Manuel Torres, executive vice president, ADOZONA).

² Tariff preferences were extended to textiles and apparel products under the United States-Caribbean Basin Trade Partnership Act (CBTPA), which went into effect in 2000 (see general note 17 of the Harmonized Tariff Schedule) and also under the U.S. Central America-Dominican Republic Free Trade Agreement (CAFTA-DR), which the Dominican Republic joined on March 1, 2007 (see general note 29 and U.S. note 27 (a) and (b) in Chapter 98 of the HTS).

³ AMTAC, NCTO, and NTA, joint written submission to the USITC, November 2, 2009.

⁴ USITC hearing transcript, November 18, 2009, 6–7 (testimony of Scott Quesenberry, former Special Textile Negotiator, United States Trade Representative).

⁵ AAFA, written submission to the USITC, November 30, 2009.

⁶ USITC hearing transcript, November 18, 2009, 6–7 (testimony of Scott Quesenberry, former Special Textile Negotiator, United States Trade Representative).

⁷ Apparel wage rates in the Dominican Republic are higher than those in El Salvador and Nicaragua but lower than those in Guatemala, Honduras, Mexico, and, in 2008, China. Various industry sources, telephone interviews by Commission staff, October 2009-May 2010; Dominican government official, e-mail message to Commission staff, April 29, 2010.

“Dockers” brand pants, grew.⁸ In 2009, about half of all Dominican apparel workers were dedicated to trouser production.⁹

Most Dominican apparel firms are locally owned and assemble clothing as subcontractors for U.S. apparel companies and retailers, including Levi Strauss & Co., Eddie Bauer, Phillips Van Heusen, Dillard’s, and JC Penney.¹⁰ Two of the largest firms in the Dominican Republic, Grupo M and D’Clase Apparel International, handle a major share of the pants production in the Dominican Republic.¹¹ However, growing competition from lower-cost Asian apparel suppliers has led to apparel plant closures and job losses in the Dominican Republic.¹² The National Free Zone Council reports that in 2007, the Dominican Republic had almost 170 apparel firms and 59,000 apparel workers.¹³ By 2009, the total number of apparel firms had declined to 135,¹⁴ and the number of apparel workers had shrunk to 45,000.¹⁵

Industry Production

In recent years, the Dominican apparel industry as a whole has been challenged by rising labor rates, high electricity costs (among the highest in the world), and insufficient access to the water supplies required for production.¹⁶ Apparel production is constrained by the lack of textile inputs (yarns and fabrics), most of which must be imported and are sourced from U.S., Nicaraguan, and Asian suppliers.¹⁷ Unlike Nicaragua and Guatemala, which

⁸ Dominican apparel industry representative, telephone interview by Commission staff, October 5, 2009; USITC hearing transcript, November 18, 2009, 39. “Dockers” is a brand of khaki garments produced by Levi Strauss & Co.

⁹ USITC hearing transcript, November 18, 2009, 40 (testimony by José Manuel Torres, executive vice president, ADOZONA). In addition to making trousers, Dominican apparel companies have been sewing knit garments (especially cotton undergarments and T-shirts) for companies such as U.S.-based Hanesbrands and Canadian-owned Gildan. Industry representative, telephone interview by Commission staff, October 5, 2009.

¹⁰ USITC hearing transcript, November 18, 2009, 19 (testimony by Steven Litton, director, D’Clase Apparel International).

¹¹ Interamericana Corporation, which had been the third-largest trouser producer, ceased production about four years ago. Industry representative, telephone interview by Commission staff, October 5, 2009.

¹² USITC hearing transcript, November 18, 2009, 20 (testimony by Steven Litton, director, D’Clase Apparel International). Increased competition from lower-cost Asian suppliers has been a major factor in the decline of U.S. imports of woven cotton bottoms from the Dominican Republic. U.S. imports of woven cotton bottoms from China rose 29 percent during 2006–09 to \$1.8 billion, whereas U.S. imports of these products rose even more rapidly from Bangladesh and Vietnam, by 74 and 53 percent, respectively, to \$906 million and \$517 million.

¹³ Dominican apparel industry representative, telephone interview by Commission staff, October 5, 2009.

¹⁴ Dominican apparel industry representative, e-mail to Commission staff, October 5, 2009. Steven Litton, director, D’Clase Apparel International, stated that in early November 2009, his company “shut down another factory because of the competitiveness of this environment.” USITC hearing transcript, November 18, 2009, 20.

¹⁵ USITC hearing transcript, November 18, 2009, 40 (testimony by José Manuel Torres, executive vice president, ADOZONA).

¹⁶ Dominican government official, e-mail message to Commission staff, April 29, 2010; USITC hearing transcript, November 18, 2009, 67–73.

¹⁷ Based on Global Trade Atlas data.

have dyeing and finishing capacity for cotton twill fabrics used for trousers, the Dominican Republic reportedly lacks such capacity.¹⁸

Production of apparel in the Dominican Republic began to decline because of increased competition from Asia following the elimination of quotas under the Agreement on Textiles and Clothing in 2005.¹⁹ Reduced demand from the U.S. market because of the downturn in the U.S. economy that began in late 2007 led to further reductions in Dominican apparel output. Total trouser production in the Dominican Republic fell sharply from 19.4 million dozen pairs in 2004, the year before quotas were removed, to 2.4 million dozen pairs in 2008.²⁰ Dominican industry representatives note, however, that the implementation of the EIAP in 2009 likely helped slow the decline in trouser production, which fell by 21 percent in its first year of operation—less than half of the 48 percent drop registered in 2008.²¹

U.S. Cotton Fabrics Industry

Industry Structure

The U.S. industry involved in the production of woven cotton fabrics for use in bottoms that are sewn in the Dominican Republic comprises three types of textile firms. The first group comprises U.S. firms that spin yarn or purchase U.S. or foreign yarn and weave it into greige fabric—pronounced “gray”—which is unfinished fabric just off the loom.²² These firms ship the unfinished woven fabrics to other firms to be dyed and finished. A second group of firms engage in capital-intensive dyeing and finishing of U.S. and foreign greige purchased fabrics.²³ A third group has vertically integrated facilities that spin yarn as well as weave, dye, and finish their own fabrics. Two textile firms lead domestic production of greige cotton twill fabrics for use in apparel.²⁴ One large fabric producer weaves greige fabrics and sends them to a leading U.S. dyeing and finishing firm that dyes and finishes the fabrics and ships them to the Dominican Republic.²⁵ The other large cotton twill fabric producer weaves, dyes, and finishes the fabrics in its domestic plants and ships them to the Dominican Republic.²⁶

¹⁸ U.S. apparel industry representative, telephone interview by Commission staff, April 16, 2010 and USITC hearing transcript, November 18, 2009, 57 (testimony by José Manuel Torres, executive vice president ADOZONA). USITC hearing transcript, November 18, 2009, 57, 61 (testimony by José Manuel Torres, executive vice president ADOZONA, and Scott Quesenberry, former special textile negotiator, United States Trade Representative). Torres stated that two Dominican manufacturers, in partnership with a U.S. customer, developed a program using U.S. fabric that was dyed and finished in Nicaragua. USITC hearing transcript, November 18, 2009, 15.

¹⁹ ADOZONA, written submission to the USITC, November 2, 2009.

²⁰ USITC hearing transcript, November 18, 2009, 16 (testimony by José Manuel Torres, executive vice president, ADOZONA).

²¹ USITC hearing transcript, November 18, 2009, 16 (testimony by José Manuel Torres, executive vice president, ADOZONA).

²² Hoechst Celanese, *Dictionary of Fiber & Textile Technology*, 1986, 74. Qualifying fabrics must be woven from U.S.-produced yarn in order to earn credits under the EIAP.

²³ Finishing operations include bleaching, dyeing, and meeting specific requirements (e.g., adding qualities such as abrasive resistance so that cuffs do not fray on the trousers as well as permanent press, stain resistance, and wicking which can add substantially to the value of a fabric). USITC hearing transcript, November 18, 2009, 49, 93–94 (testimony by Carlos Moore, president, AM&S Trade Services, on behalf of Swift Galey, Inc.).

²⁴ U.S. textile industry representative, telephone interview by Commission staff, May 17, 2010.

²⁵ Swift Galey, written submission to the USITC, November 18, 2009, USITC hearing transcript, November 18, 2009, 22–23.

²⁶ U.S. textile industry representative, telephone interview by Commission staff, May 17, 2010.

Industry Production

U.S. production of cotton twill fabrics has been declining for the past three to four years.²⁷ Although U.S. production data for cotton twill fabrics are not reported individually in Commerce data, overall U.S. production of cotton twill and sateen fabric dropped 53 percent between 2005 and 2008, falling from 311.1 million SMEs to 145.0 million SMEs.²⁸ Since 2006, two major U.S. textile producers of cotton twill fabrics have gone out of business.²⁹ Although production of dyed and finished woven cotton fabrics is largely capital-intensive, labor costs appear to be part of the problem.³⁰ Industry sources indicated that because of higher U.S. labor rates, the price of U.S. fabrics is \$0.50–\$0.75 per yard (\$0.36–\$0.54 per SME)³¹ higher than that of similar quality fabrics produced by Asian suppliers.³²

U.S.-Dominican Textile and Apparel Trade

U.S. imports of apparel and woven cotton bottoms from the Dominican Republic

The Dominican Republic is a small supplier of apparel to the United States, representing only 1 percent of total U.S. apparel imports in 2009.³³ During 2006–09, total U.S. imports of apparel from the Dominican Republic fell by 60 percent, from \$1.5 billion to \$608.7 million (table 2.1). U.S. imports of woven cotton bottoms from the Dominican Republic fell by 59 percent during 2006–09, from \$198.9 million to \$81.4 million. Woven cotton bottoms from the Dominican Republic accounted for 13 percent of total U.S. imports of apparel in 2009, essentially unchanged from 2006. The United States is the largest export market for Dominican apparel firms, accounting for 88 percent of total apparel exports from the Dominican Republic in 2009.³⁴

TABLE 2.1 U.S. imports of woven cotton bottoms and share of total U.S. imports of apparel from the Dominican Republic

Import item	2006	2007	2008	2009	Jan-March 2010
Woven cotton bottoms (1,000 \$)	198,889	174,331	97,987	81,403	20,355
All apparel (1,000 \$)	1,535,352	1,048,839	835,106	608,678	124,221
Woven cotton bottoms share of total apparel (%)	13.0	16.6	11.7	13.4	16.4

Source: U.S. International Trade Commission DataWeb.

²⁷ USITC hearing transcript, 94–95.

²⁸ One U.S. textile industry representative stated, though, that cotton twill fabric accounts for most of the reported SMEs in this report. USITC hearing transcript, November 18, 2009, 95.

²⁹ U.S. textile industry representative, telephone interview by Commission staff, May 13, 2010. One firm went out of business in 2006 because of an accident that adversely affected its plant and not because of competitiveness factors. U.S. textile industry representative, telephone interview by Commission staff, May 17, 2010.

³⁰ U.S. textile industry representative, telephone interview by Commission staff, May 17, 2010.

³¹ Converted by Commission staff, assuming a 60-inch-width fabric.

³² Based on data supplied in post-hearing submission by Steven Litton, director, D'Clase Apparel International, December 2, 2009, and a U.S. textile industry representative, telephone interview by Commission staff, May 13, 2010.

³³ Based on USITC Dataweb statistics.

³⁴ Export shares are based on trade data from the Global Trade World Atlas.

U.S. imports under the EIAP

The first U.S. imports declared under the EIAP entered in April 2009; by the year's end, they totaled \$26.9 million, 33 percent of total U.S. imports of woven cotton bottoms from the Dominican Republic in 2009, or about 4 percent of total U.S. imports of apparel from the Dominican Republic. By March 2010, cumulative U.S. imports of woven cotton bottoms under the EIAP totaled \$33.3 million. Most of the woven cotton bottoms entering under the EIAP have been pants and trousers, especially sports pants and dress pants made for private labels and national brands, as well as school and commercial uniform pants.³⁵ The remaining products—breeches and shorts, bib and brace overalls, and women's skirts and divided skirts—accounted for a small share of total imports under the program in 2009.

U.S. exports of woven cotton fabrics to the Dominican Republic

In 2009, U.S. exports to the Dominican Republic of woven cotton fabrics suitable for use in the production of woven cotton bottoms totaled 6.1 million SMEs and accounted for 45 percent of the total volume of U.S. woven cotton fabric exports to the Dominican Republic. U.S. exports of such woven cotton fabrics to the Dominican Republic have declined sharply since 2004, when such exports totaled 122.2 million SMEs.

³⁵ Representatives of U.S. and Dominican firms that are actively using the program, e-mail messages to and telephone interviews by Commission staff, April and May 2010. Import data for woven cotton bottoms entering under the 2 for 1 program are not broken out by type of HTS classification to protect the confidentiality of the firms using the program.

CHAPTER 3

Evaluation of the Earned Import Allowance Program

Overview

Based on industry reports, the EIAP has had some initial beneficial effect on both the U.S. and Dominican industries. Most of the benefits, however, can be attributed to the credits earned for retroactive qualifying fabric exports, dating back to 2007. The U.S. textile firms that appear to have benefited the most to date are those firms that have imported foreign greige fabrics that they dye and finish in the United States for export to the Dominican Republic. In addition, the program has helped slow job losses in the Dominican industry that makes woven cotton bottoms and has helped lower the costs for U.S. apparel companies that import woven cotton bottoms from the Dominican Republic. Reports on planned use of the program going forward are mixed, as Dominican apparel manufacturers and U.S. apparel companies indicate that the advantages of using the program will decline as existing foreign fabric credits are depleted. The long-term effectiveness of the program will be clearer once the retroactive credits are exhausted.

Program Participation

Nine companies have registered and set up accounts to participate in the EIAP, but not all of those firms are actively using the program.¹ The principal firms using the EIAP are large companies.² Most of the nine firms have been either manufacturing apparel or subcontracting the production of apparel in the Dominican Republic for over 20 years; others have been there for at least 10 years.³

Since the program's implementation, U.S. imports of woven cotton bottoms under the EIAP have totaled about 5.0 million SMEs through March 2010 (table 3.1).⁴ As of May 1, 2010, Commerce had issued export credits for 8.9 million SMEs of fabric,⁵ leaving a balance of about 3.9 million SMEs in credits. This fact means that approximately 3.9 million SMEs worth of bottoms can still enter the United States free of

¹ U.S. government official, interview by Commission staff, Washington, DC, April 13, 2010; Dominican apparel industry representatives, e-mail messages to Commission staff, April 15 and 23, 2010; U.S. apparel industry representatives, telephone interviews with Commission staff, May 13–15, 2010.

² USITC hearing transcript, November 18, 2009, 42 (testimony of José Manuel Torres, executive vice president, ADOZONA).

³ U.S. and Dominican apparel industry representatives, e-mail messages to Commission staff, May 7, 2010, and telephone interviews with Commission staff, May 13 and 14, 2010, and June 7, 2010.

⁴ The first U.S. imports under the program began in April 2009; therefore, the trade data are based on trade from April 2009 through March 2010. U.S. import data under the EIAP are from U.S. Department of Commerce, Office of Textiles and Apparel, e-mail message to Commission staff, May 18, 2010. Commission staff converted the data from dozens to SMEs using the ratio of 14.9 SMEs per dozen bottoms.

⁵ U.S. Department of Commerce, Office of Textiles and Apparel, "Free Trade Agreements, CAFTA-DR Two for One Earned Income Allowance Program," <http://web.ita.doc.gov/tacgi/fta.nsf/6b2bbf77ad031a928525737d0053e0b1/eb15d50f3c6ebc84852575770064d0ae?OpenDocument&country=FTA> (accessed May 19, 2010).

duty under the EIAP using third-country fabrics before all the existing credits are depleted.

Table 3.1 U.S. imports of qualifying apparel under the EIAP

Item	2009				2010	Total since implementation of EIAP
	1st quarter	2nd quarter	3rd quarter	4th quarter	1 st quarter	
Quantity (million SMEs)	^(a)	1.7	1.4	1.0	0.9	5.0
Value (million dollars)	^(a)	9.3	10.2	7.4	6.4	33.3

Source: Based on U.S. import data supplied by the U.S. Department of Commerce, Office of Textiles and Apparel.

Note: Because data on U.S. imports under the program are not available on a disaggregated basis by type of product, the data are converted from dozens of units to SMEs using a conversion ratio of 14.9 SMEs per dozen, which is the conversion ratio for imports for men's and women's trousers and shorts. A few products, such as women's skirts and children's playsuits, have different conversion ratios, but are believed to account for a relatively small share of imports under the program. Conversion ratios are available at U.S. Department of Commerce, OTEXA, Textile Correlation, <http://otexa.ita.doc.gov/corr.htm>.

^aThere were no imports in the first quarter of 2009. Imports of apparel under the program began in April 2009.

Dominican Industry Benefits

Although the EIAP has not resulted in new investment or production in the Dominican Republic, it appears to have helped slow the rate of decline in the apparel industry.⁶ Industry sources indicated that the program has protected existing jobs in the industry.⁷ One pants producer in the Dominican Republic asserted that without the program, its firm “would be half the size, if we were in business.”⁸ Supporting these observations is the fact that since the EIAP went into effect, the decline in U.S. imports of woven cotton bottoms from the Dominican Republic has slowed in terms of absolute value and market share (figures 3.2 and 3.3). During 2008–09, the quantity of these U.S. imports declined by 21 percent, compared with a 42 percent decline during 2007–08. For the most recent period, January–March 2010, U.S. imports of woven cotton bottoms were 12 percent below the level for the same period in 2009.

According to Dominican industry sources, the use of foreign fabrics under the EIAP has enabled them to procure lower-cost fabrics from Asia, which in turn has helped them be more competitive vis-à-vis other suppliers of woven cotton bottoms to the U.S. market.⁹ In the Commission hearing, an official from D’Clase Apparel International (D’Clase), a major pants manufacturer in the Dominican Republic, stated that although U.S.-produced fabric is available, it is “cost-prohibitive” for most of its customers.¹⁰ Firms indicated that

⁶ USITC hearing transcript, November 18, 2009, 41 (testimony of José Manuel Torres, executive vice president, ADOZONA); Dominican apparel industry representative, e-mail message to Commission staff, May 20, 2010.

⁷ USITC hearing transcript, November 18, 2009, 40 (testimony of José Manuel Torres, executive vice president, ADOZONA).

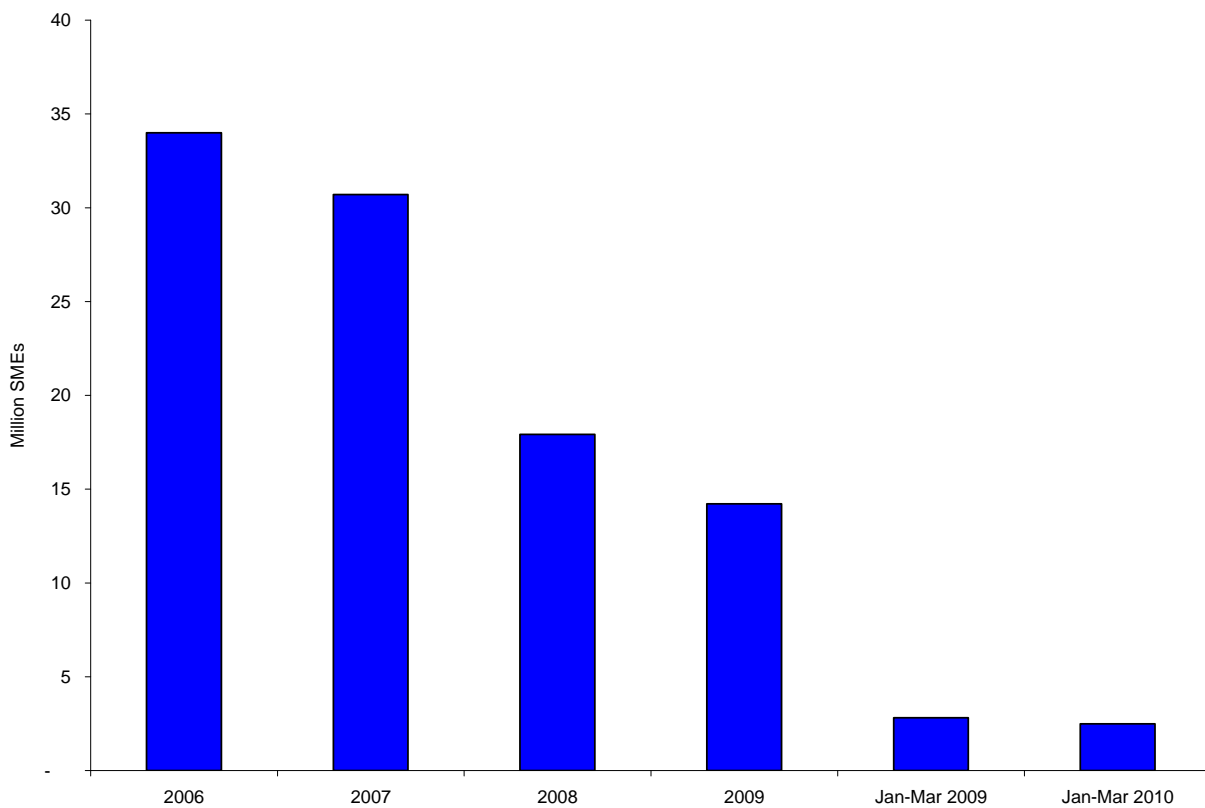
⁸ USITC hearing transcript, November 18, 2009, 85 (testimony of Steven Litton, director, D’Clase Apparel International).

⁹ USITC hearing transcript, November 18, 2009, 18–19 (testimony of Steven Litton, director, D’Clase Apparel International); Dominican apparel industry representative, e-mail message to Commission staff, April 12, 2010.

¹⁰ USITC hearing transcript, November 18, 2009, 89 (testimony of Steven Litton, director, D’Clase Apparel International).

the cost of the fabric accounts for 48–70 percent of the cost of the finished pants and thus strongly affects pricing of the final product.¹¹ According to data provided by D’Clase, pants produced in the Dominican Republic using U.S. fabric (at \$3.08 per yard, or \$2.21 per SME)¹² would cost \$9.74 landed duty paid (LDP) in the United States (assuming duty-free treatment under DR-CAFTA).¹³ The same pair of pants produced in the Dominican Republic from Asian fabric (at \$2.50 per yard, or \$1.79 per SME) would cost \$9.13 LDP, assuming the pair of pants is entered free of duty. Under the above scenario, a firm using solely foreign fabric credits is able to save \$0.61 (6.3 percent) per pair of pants over the cost of using U.S. fabric under CAFTA-DR. Under the 2 for 1 provision, the average cost of a pair of pants would be \$9.54, or \$0.20 (2.1 percent) less than the cost of the pants using exclusively U.S. fabric under CAFTA-DR. At the Commission hearing, D’Clase stated that they often compete for business on the basis of “pennies and nickels” and that \$0.10–0.15 can make a great difference in their business.¹⁴

Figure 3.1 Woven cotton bottoms: U.S. imports from the Dominican Republic declined during 2006 through March 2010, but the rate of decline slowed in 2009 and interim 2010.



Source: USITC DataWeb, accessed May 20, 2010.

Note: Data represent U.S. imports of apparel eligible under the EIAP, as reported in chapter 1.

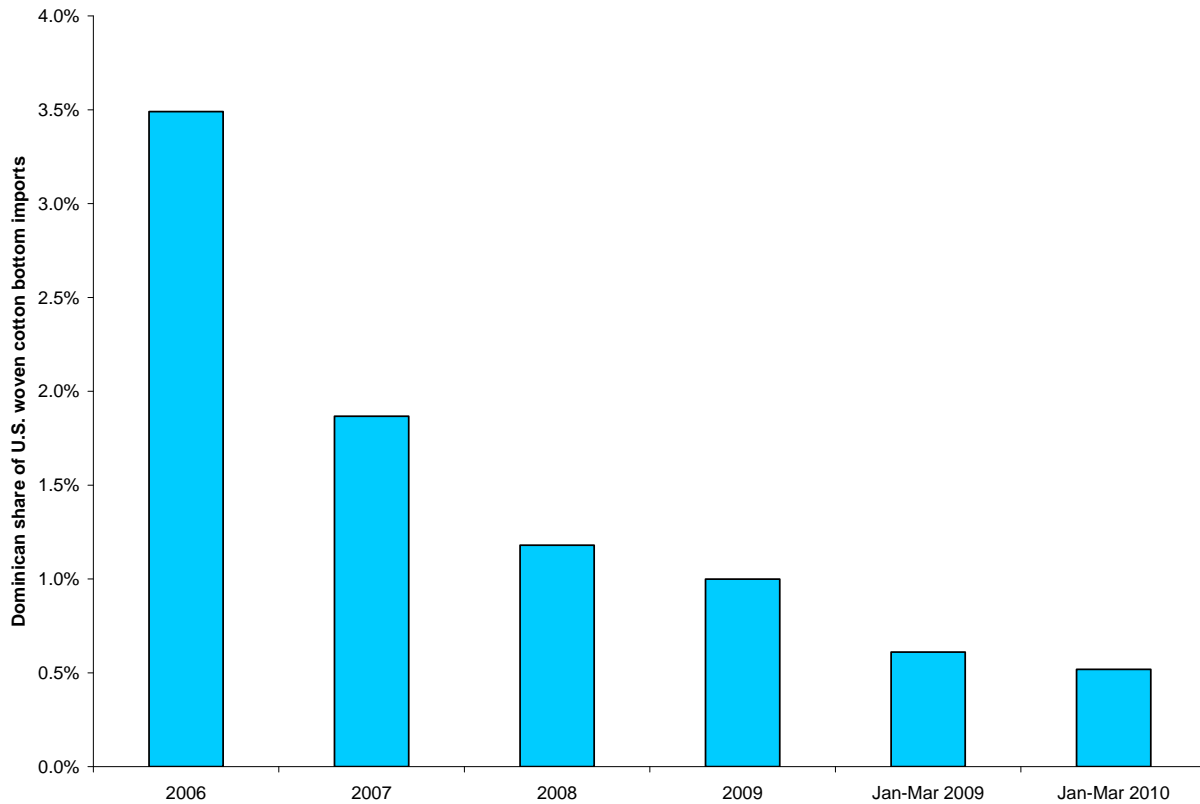
¹¹ U.S. and Dominican apparel industry representatives, e-mails to Commission staff, April 26, 2010, and May 13, 2010.

¹² Conversion to SMEs based on a 60-inch-width fabric.

¹³ D’Clase Apparel International, written submission to the USITC, December 2, 2009.

¹⁴ USITC hearing transcript, November 18, 2009, 19 and 31 (testimony of Steven Litton, director, D’Clase Apparel International).

Figure 3.2 Woven cotton bottoms: The Dominican share of U.S. imports declined, but the rate of decline slowed in 2009 and interim 2010.



Source: USITC DataWeb, accessed July 6, 2010.

Some U.S. apparel industry sources that are currently using foreign fabric credits under the EIAP indicated that they were not sure if they would continue to use the program once the foreign fabric credits were exhausted, because it does not appear that use of the program would be cost-effective.¹⁵ A few of these firms indicated they may move production out of the Dominican Republic to alternate sources if it is no longer cost-effective to produce there.¹⁶ A Dominican apparel industry representative also indicated the industry would likely lose significant volumes of business once the retroactive foreign fabric credits are depleted, unless the program is changed to make it more cost-effective for users, such as changing the ratio of U.S. to foreign fabrics to 1 for 1 (see chapter 4 for additional information on proposed modifications to the program).¹⁷ One U.S. apparel firm indicated that it would likely continue to have pants made in the Dominican Republic after its retroactive credits are depleted,¹⁸ while other firms indicated that they

¹⁵ U.S. apparel industry representatives, telephone interviews with Commission staff, May 13 and 14, 2010.

¹⁶ U.S. apparel industry representatives, telephone interviews with Commission staff, May 14 and 17, 2010.

¹⁷ Dominican apparel industry representatives, e-mail messages to Commission staff, April 12 and May 12, 2010.

¹⁸ U.S. apparel industry representative, telephone interview with Commission staff, June 7, 2010.

were unsure of their future plans regarding their use of the program and production in the Dominican Republic.¹⁹

U.S. Industry Benefits

The primary U.S. beneficiaries of the EIAP to date appear to be U.S. firms that have been able to dye and finish third-country greige fabrics in the United States and U.S. apparel companies that contract production of cotton bottoms in the Dominican Republic. 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 percent or more to the value of an unfinished fabric.²⁰ It is unclear to what extent U.S. fabric producers that weave the fabric have benefited from the program to date.

Swift Galey, a major dyer and finisher of trouser fabrics in the United States, stated that it has received interest from new customers as a result of the program, but that the business to date has accrued primarily as a result of its customers taking advantage of retroactive credits allowing them to use third-country greige fabrics that are finished in the United States.²¹ According to Swift Galey, it only began to receive orders to use U.S.-produced greige fabrics at the end of 2009.²²

U.S. exports of certain woven bottom-weight cotton fabrics to the Dominican Republic increased in terms of absolute value and market share during 2008–09 (figures 3.3 and 3.4). It is likely that most of this increase is attributable to U.S. exports of third-country fabrics that were dyed and finished in the United States.²³ At least initially, it appears that the growth in U.S. fabric exports may not be sustained. The level of U.S. fabric exports in the first quarter of 2010 was 7 percent below that in the first quarter of 2009.

¹⁹ U.S. apparel industry representative, telephone interviews with Commission staff, May 13 and 14, 2010, and June 7, 2010.

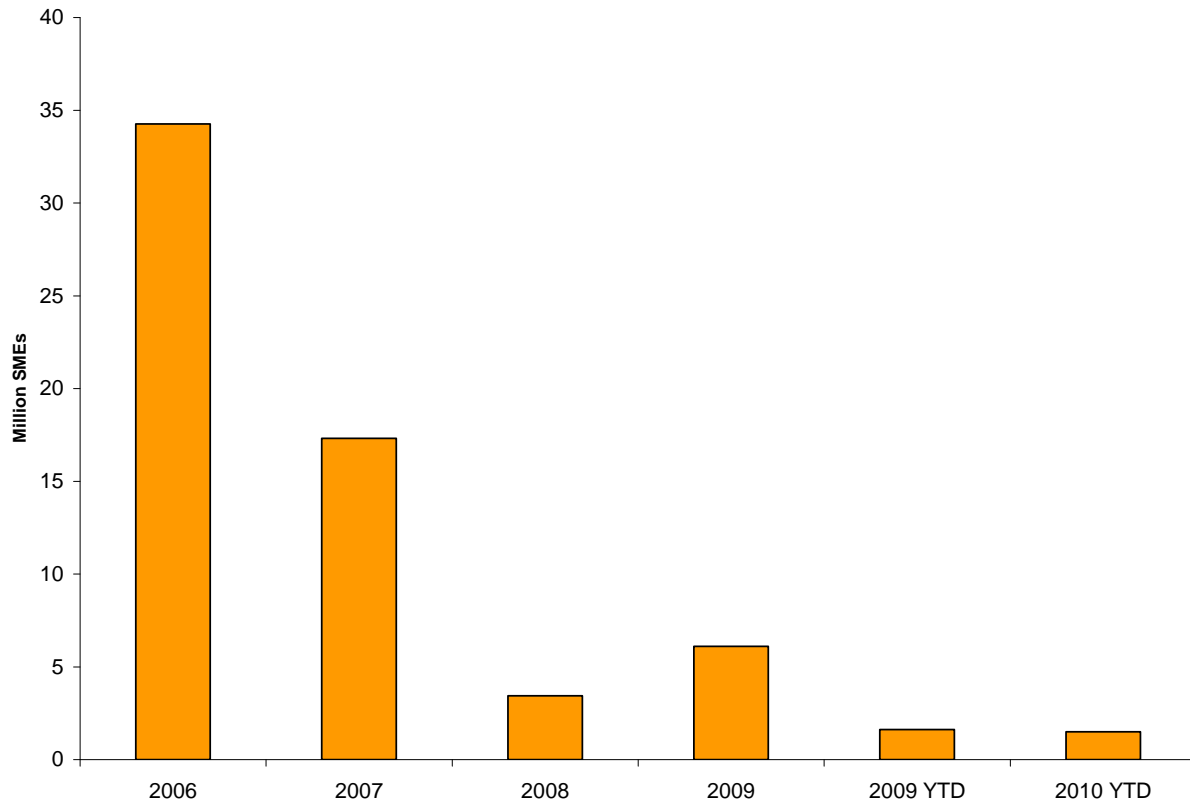
²⁰ American Manufacturing Trade Action Coalition, National Council of Textile Organizations, and National Textile Association, written submission to the USITC, November 2, 2010, 2; USITC hearing transcript, November 18, 2009, 49 (testimony of Carlos Moore president, AM&S Trade Services on behalf of Swift Galey).

²¹ USITC hearing transcript, November 18, 2009, 30 (testimony of Carlos Moore president, AM&S Trade Services on behalf of Swift Galey); Swift Galey, written submission to the Commission, December 13, 2009.

²² Swift Galey, written submission to the Commission, December 13, 2009.

²³ According to the Schedule B, 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 U.S. Department of Commerce, 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>.

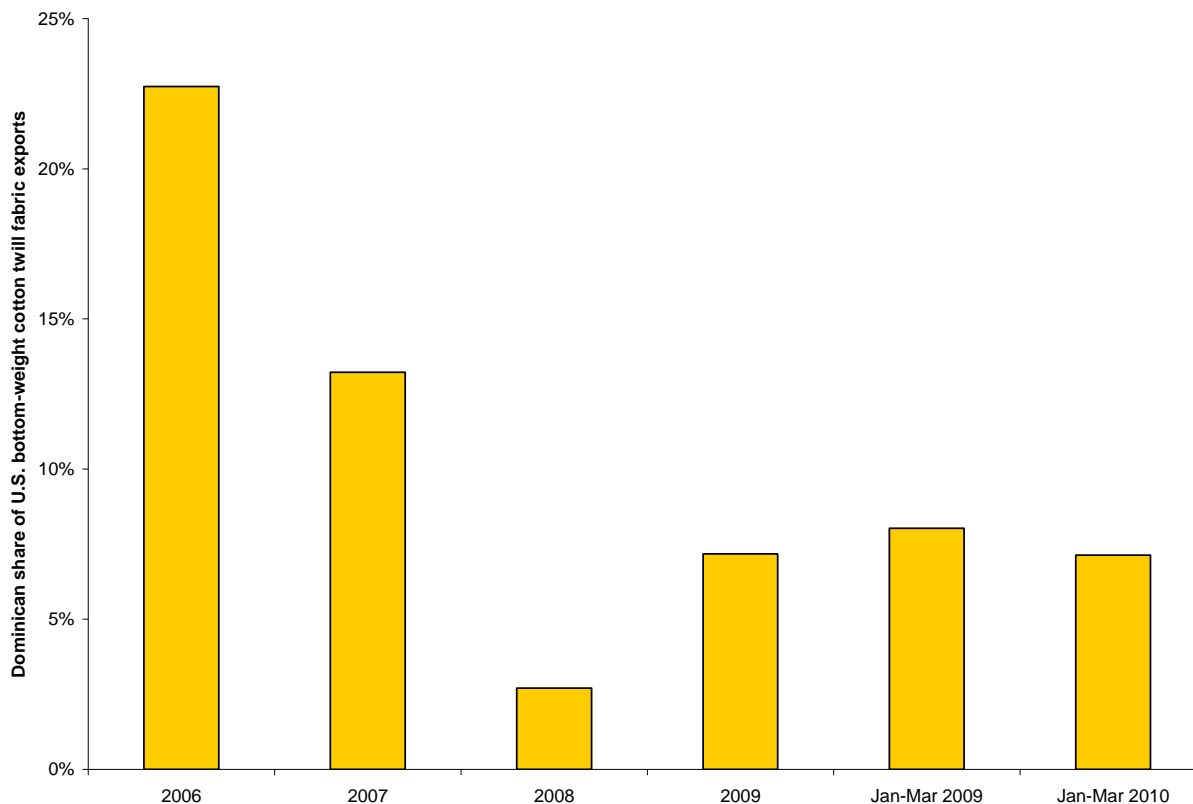
Figure 3.3 Bottom-weight cotton twill fabrics: U.S. exports to the Dominican Republic picked up in 2009, after significant declines in prior years.



Source: USITC DataWeb, accessed May 20, 2010.

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; 5209.42.0030; 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 3.4 Bottom-weight cotton twill fabrics: The Dominican share of U.S. exports increased in 2009, reversing the steady decline in prior years.



Source: USITC DataWeb, accessed July 6, 2010.

Commission staff were unable to identify any U.S. firms that said they had increased sales or exports of domestically woven fabrics as a result of the program, but one U.S. producer indicated that it expected to receive new orders soon.²⁴ Although domestic production data are not available on bottom-weight cotton twill fabrics, U.S. production of all types of cotton twill fabrics²⁵ declined by over 40 percent during 2008–09, from 145.0 million SMEs to 84.5 million SMEs.²⁶

U.S. apparel firms that import woven cotton bottoms from the Dominican Republic have benefited from the EIAP through the extension of duty-free treatment to their imports of finished bottoms that contain foreign fabrics. As indicated above, industry sources stated that the cost of Asian fabrics is lower than that of U.S.-produced fabrics. By allowing the use of less expensive foreign fabrics, the EIAP has enabled U.S. apparel firms to import

²⁴ U.S. textile industry representatives, telephone interviews by Commission staff, May 17 and 24, 2010.

²⁵ Also includes sateen fabrics. U.S. production data group twill and sateen fabrics together. According to industry sources, most U.S. production consists of twill fabrics rather than sateen fabrics. USITC hearing transcript, November 18, 2009, 95 (testimony of Carlos Moore, president, AM&S Trade Services on behalf of Swift Galey).

²⁶ U.S. Department of Commerce, U.S. Census Bureau, *Current Industrial Reports, Textiles*, 2008 Summary and Second–Fourth Quarters, 2010.

lower-cost bottoms produced in the Dominican Republic.²⁷ The EIAP has also provided U.S. apparel firms with greater access to fabrics. U.S. and Dominican industry sources indicated that it is sometimes difficult to get U.S.-produced fabric, because U.S. production has declined in recent years and firms have closed.²⁸

Administration of the Program

In January 2009, OTEXA established an interactive online system to administer and manage the EIAP. In its first year of operation, industry assessments of the interactive online system have been largely favorable. Users stated that as with any new program, the online system has a learning curve, and that on occasion, the response time for posting credits has been over 72 hours.²⁹ One company representative stated that his firm had difficulty in obtaining credits for its fabric purchases, not because of problems caused by the online system, but because of the firm's broker. Another industry representative reported that simple errors or data discrepancies on the shippers' export declaration forms required by the program have sometimes caused major delays and that U.S. textile mills have not readily corrected the errors.³⁰ Nevertheless, now that initial glitches have been removed, the consensus of companies using the program is that the online system works, is user-friendly, is accurate, and imposes no additional costs.³¹

²⁷ The cost differential varied by firm and product, but one firm stated that Asian fabrics can cost less than one-half of the price of U.S.-produced fabric for the same or similar style. U.S. apparel industry representative, telephone interview by Commission staff, May 14, 2010.

²⁸ U.S. and Dominican apparel industry representatives, e-mail messages to Commission staff, October 5, 2010, and May 14, 2010.

²⁹ One program user stated that they had to resolve some miscommunications to become familiar with how to establish and use credits. U.S. apparel industry representative, telephone interview by Commission staff, May 13, 2010; USITC hearing transcript, November 18, 2009, 81 (testimony by Carlos Moore, president, AM&S Trade Services, on behalf of Swift Galey).

³⁰ Industry representative, telephone interview by Commission staff, October 5, 2009.

³¹ Industry representatives, telephone interviews with Commission staff, May 13–17, 2010; USITC hearing transcript, November 18, 2009, 83 (testimony of José Manuel Torres, executive vice president, ADOZONA).

CHAPTER 4

Recommendations for Improvements in the Earned Import Allowance Program

Overview

Over the course of the investigation, the Commission received several recommendations from industry and government representatives regarding improvements to the EIAP. The recommendations focused on the legislation that established the program, including the 2 for 1 ratio of U.S. to foreign fabric, as well as the implementation of the program, such as how Commerce interprets the term “wholly formed” fabrics. Several of the recommendations came from more than one industry source, although they sometimes differed on particular points, such as the requirement that dyeing and finishing of eligible fabrics take place in the United States. For example, users of the EIAP in the Dominican Republic often recommended that current regulations be relaxed, while representatives of the U.S. textile industry generally oppose changes to existing regulations. Industry sources indicated that expanded use of the program may be contingent on adjustments being made to the program.

Recommendations for Legislative Improvements

Change in Ratio to “1 for 1”

Several representatives of the Dominican apparel industry suggested changing the statutory ratio for the EIAP to 1 for 1, similar to the Nicaragua earned import allowance program.¹ According to Dominican producers, a more liberal ratio would allow Dominican firms to enhance their offerings to U.S. customers² and result in overall cost savings for Dominican apparel producers, as well as their customers. One firm said that under a 2 for 1 program, the purchase of two units of U.S. fabric at, for example, \$3.50 per yard (\$2.51 per SME)³ and one unit of foreign fabric at \$2.50 per yard (\$1.79 per SME) averages out to a cost per yard of \$3.17 (\$2.27 per SME). However, the firm said that if the same fabric were purchased under a ratio of 1 for 1, the average cost of the fabric would be only \$3.00 per yard (\$2.15 per SME).⁴ Using data provided by this same company on the cost of pants made with U.S. versus foreign fabric, the average cost of a pair of pants under the current 2 for 1 scenario would be \$9.54, while the average cost of

¹ This recommendation was also made in regard to the EIAP for apparel imports from Haiti in GAO’s recent report (GAO, 2010, “International Trade,” 17). Other industry suggestions for Haiti’s program, such as modifying the interpretation of “wholly formed,” are also similar to the recommendations in this report.

² USITC hearing transcript, November 18, 2009, 36 (testimony by José Manuel Torres, executive director, ADOZONA).

³ Assuming a fabric width of 60 inches.

⁴ USITC hearing transcript, November 18, 2009, 80, 85 (testimony by Steven Litton, director, D’Clase Apparel International).

a pair of pants using a 1 for 1 ratio would be \$9.44.⁵ The cost savings would make Dominican pants firms more competitive, as firms reportedly compete on the basis of even incremental differences in price.⁶ One firm indicated that as firms use up retroactive credits under the 2 for 1 ratio, a shift to a 1 for 1 ratio could spur usage of the program going forward.⁷

Program Expansion

A number of U.S. and Dominican industry representatives indicated support for expansion of the number 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. For example, one industry representative said that there was interest in adding cotton polyester blended fabrics, including polyester cotton twill fabrics, and broadwoven fabrics, such as poplin fabrics, to the program.⁸ Another source indicated that they would expand their purchases of Dominican-made apparel if other products, such as shirts, were added to the EIAP.⁹ In addition, several companies said that they would like to see denim apparel be included in the program.¹⁰ 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. One Dominican producer characterized the exclusion of denim and other fabrics as overly restrictive, making the program essentially unusable for that firm.¹¹ According to one U.S. apparel industry representative, expansion of the EIAP to include additional fabrics and apparel items reportedly could increase the level of business between U.S. and Dominican companies under the EIAP.¹²

One person suggested that the EIAP could be expanded to include other CAFTA countries. He indicated that other CAFTA countries would like to be included in the program and suggested that subsequent negotiations on whether to expand the EIAP to these countries could lead to further discussion of the dyeing and finishing issue (discussed below), as well as the types of fabrics included under the program.¹³

⁵ Under a 2 for 1 program, the cost of two pairs of pants made with U.S. fabric (at \$9.74 per pair) and one pair of pants made with foreign fabric (at \$9.13 per pair) averages out to a cost per pair of \$9.54, while under a 1 for 1 ratio, the cost of one pair of pants made with U.S. fabric and one pair of pants made with foreign fabric averages out to a cost per pair of \$9.44. D'Clase, written submission to the USITC, December 2, 2009.

⁶ USITC hearing transcript, November 18, 2009, 80, 85 (testimony by Steven Litton, director, D'Clase Apparel International).

⁷ Dominican apparel industry representative, e-mail message to Commission staff, May 12, 2010.

⁸ USITC hearing transcript, November 18, 2009, 63, 87 (testimony by Carlos Moore, president, AM&S Trade Services, on behalf of Swift Galey).

⁹ U.S. apparel industry representative, telephone interview by Commission staff, May 13, 2010.

¹⁰ USITC hearing transcript, November 18, 2009, 26 (testimony by Carlos Moore, president, AM&S Trade Services, on behalf of Swift Galey); Dominican apparel industry representative, e-mail message to Commission staff, April 23, 2010; U.S. apparel industry representative, telephone interview by Commission staff, May 17, 2010.

¹¹ Dominican apparel industry representative, e-mail message to Commission staff, April 23, 2010.

¹² U.S. apparel industry representative, telephone interview by Commission staff, May 13, 2010; USITC hearing transcript, November 18, 2009, 87 (testimony by Carlos Moore, president, AM&S Trade Services, on behalf of Swift Galey).

¹³ USITC hearing transcript, November 18, 2009, 12 (testimony by Scott Quesenberry, former special textile negotiator, United States Trade Representative).

Recommendations Relating to Implementation Improvements

Definition of “Wholly Formed”

The most controversial provision of the EIAP appears to be whether the interpretation of “wholly formed” fabrics should require that fabrics be dyed and finished in the United States. Users of the EIAP operating in or sourcing from the Dominican Republic overwhelmingly recommend that the current interpretation, which requires that dyeing and finishing must take place in the United States, be changed to allow such operations to take place in other countries. There are parties that have advocated allowing dyeing and finishing in other CAFTA countries,¹⁴ and reportedly there are dyeing and finishing operations in the region, particularly in Nicaragua, but also in Guatemala, that could be used for this purpose.¹⁵ Moreover, the U.S. dyeing and finishing requirement is cited as inconsistent with requirements under other similar programs such as the Nicaragua 1 for 1 program,¹⁶ and the current interpretation has reportedly reduced potential beneficiaries’ incentive to use the program.¹⁷ One user of the EIAP indicated that if dyeing and finishing in Nicaragua were permitted, it would allow the company to expand and be more cost-competitive.¹⁸ According to another firm that buys U.S. greige fabric, dyes and finishes it in Nicaragua, and then ships it to the Dominican Republic, if dyeing and finishing in the region were allowed, the company could double its usage of the program.¹⁹

Certain representatives of the U.S. textile industry oppose any change to the requirement that eligible fabrics under the EIAP be dyed and finished in the United States. Associations representing U.S. textile interests stated that in accordance with the intent of the program to provide a market for U.S. textile products, the current definition of the term “wholly formed” supports domestic dyers and finishers, a key segment and major source of employment in the U.S. textile industry.²⁰ Reportedly, support of the program by U.S. textile interests was based on the understanding that U.S. dyeing and finishing would be required,²¹ and there would be opposition to renewal of the EIAP if the current interpretation of “wholly formed” is changed.²² Further, U.S. firms stated that if the dyeing and finishing requirement were changed, the U.S. textile industry would be adversely affected.²³ At the same time, comments submitted to Commerce on the wholly formed issue indicated that there is at least one U.S. fabric producer shipping greige

¹⁴ USITC hearing transcript, November 18, 2009, 17–18 (testimony by José Manuel Torres, executive vice president, ADOZONA); U.S. apparel industry representative, telephone interview by Commission staff, April 16, 2010.

¹⁵ USITC hearing transcript, November 18, 2009, 15 (testimony by José Manuel Torres, executive vice president, ADOZONA); USITC hearing transcript, November 18, 2009, 59 (testimony of Steven Litton, director, D’Clase Apparel International).

¹⁶ 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.

¹⁷ USITC hearing transcript, November 18, 2009, 15 (testimony by José Manuel Torres, executive vice president, ADOZONA).

¹⁸ U.S. apparel industry representative, telephone interview by Commission staff, May 13, 2010.

¹⁹ U.S. apparel industry representative, telephone interview by staff, April 16, 2010.

²⁰ AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

²¹ AM&S Trade Services, LLC, on behalf of Swift Galey, written submission to the USDOC, May 4, 2009.

²² AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

²³ U.S. textile industry representative, telephone interview by Commission staff, May 17, 2010.

fabric to the DR-CAFTA region for finishing that would be negatively affected by continuation of the status quo.²⁴ Yet another user of the program stated that for its business, the dyeing and finishing issue was not a constraint, nor was it a disincentive for using the program.²⁵

Education and Facilitation

Although most users of the EIAP indicated that the program was easy to use, there were some firms that suggested ways to improve understanding and use of the program, particularly for small to medium-sized companies. For example, inexperience with the electronic system, the documents required, and the program in general have reportedly hindered full participation by eligible companies.²⁶ Making the online credit system more user friendly through education and training for existing and potential users, as well as greater outreach targeting potential users of the program, could reportedly increase interest in and use of the program, particularly on the part of smaller companies.²⁷

²⁴ Sandler, Travis & Rosenberg, on behalf of Fishman and Tobin, written submission to the USDOC, May 1, 2009.

²⁵ U.S. apparel industry representative, telephone interview by Commission staff, May 13, 2010.

²⁶ U.S. government official, interview by Commission staff, April 13, 2010; Dominican and U.S. apparel industry representatives, telephone interviews by Commission staff, October 5, 2009, and May 14, 2010.

²⁷ USITC hearing transcript, November 18, 2009, 90 (testimony by José Manuel Torres, executive vice president, ADOZONA); Dominican apparel industry representative, interview by Commission staff, October 5, 2009; U.S. government official, interview by Commission staff, April 13, 2010.

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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
***Federal Register* Notice**

Northeast Region, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E9-9781 Filed 4-28-09; 8:45 am]

BILLING CODE 4312-52-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

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Pursuant to section 404(d) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (19 U.S.C. 4112(d)), and pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) has instituted investigation No. 332-503, *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic*, for the purpose of submitting annual reports on the effectiveness of the program and recommendations for improvements.

DATES:

October 30, 2009: Deadline for filing requests to appear at the public hearing.

November 3, 2009: Deadline for filing pre-hearing briefs and statements.

November 18, 2009: Public hearing.

November 30, 2009: Deadline for filing post-hearing briefs and statements.

February 24, 2010: Deadline for all other written submissions.

July 28, 2010: Transmittal of first 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 Laura Rodriguez (202-205-3499 or laura.rodriguez@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) requires the Secretary of Commerce to establish an Earned Import Allowance Program (EIAP) and directs 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 was added by section 2 of Public Law 110-436, "An Act to extend the Andean Trade Preference Act, and for other purposes." It 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 statute provides that the program will be in effect for the 10-year period beginning on the date on which the President certifies to the committees that sections A, B, C, and D of the Annex to Presidential Proclamation 8213 (December 20, 2007) have taken effect. The Commission expects to submit its first report to the committees by July 28, 2010.

The Commission has also 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 investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC beginning at 9:30 a.m. on November 18, 2009. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., October 30, 2009, 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., November 3, 2009; and all post-hearing briefs and statements responding to matters raised at the hearing should be filed not later than 5:15 p.m., November 30, 2009. If, as of the close of business on October 30, 2009, 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 October 30, 2009, to determine whether the hearing will be held.

Submissions: 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. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic

Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000). Any submissions that contain confidential business information must also conform 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 anticipates that the reports it sends to the committees in this investigation will be made available to the public in their entirety. Consequently, the reports 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: April 23, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–9705 Filed 4–28–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–7]

Certain Passenger Vehicle and Light Truck Tires From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a hearing.

SUMMARY: Following receipt of a petition filed on April 20, 2009, on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, the Commission instituted investigation No. TA–421–7 under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) to determine

whether new pneumatic tires, of rubber, from China, of a kind used on motor cars (except racing cars) and on-the-highway light trucks, vans, and sport utility vehicles, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50 of the Harmonized Tariff Schedule of the United States (HTS), are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.¹

DATES: Not later than seven days following the publication of this notice in the **Federal Register**: Deadline for filing entries of appearance.

May 26, 2009: Deadline for filing request to appear at the public hearing.

May 28, 2009: Deadline for filing prehearing briefs.

June 2–3, 2009: Public hearing.

June 8, 2009: Deadline for filing posthearing briefs.

June 16, 2009: Deadline for submitting final comments on market disruption.

June 19, 2009: Transmittal of Commission determination on market disruption to the President and the U.S. Trade Representative.

June 24, 2009: Deadline for submitting final comments on remedy.

July 9, 2009: Transmittal of Commission report to the President and the U.S. Trade Representative.

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

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), or Amy Sherman (202–205–3289), 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.

¹The HTS subheadings are provided for convenience and customs purposes; the written description of the product under investigation is dispositive.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Confidential business information (CBI).—Any submissions that contain confidential business information must also conform with the requirements of sections 201.6 and 206.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6 and 206.8). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information and except as provided for below, will be made available for inspection by interested parties.

Limited disclosure of CBI.—Pursuant to section 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under an Administrative Protective Order (APO) issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO. In addition, the Commission may include CBI in the report it sends to the President and to the U.S. Trade Representative.

Hearing.—The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on June 2, 2009, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary on or before May 26, 2009. All persons desiring to appear at the hearing and make oral

APPENDIX C

Summary of Positions of Interested Parties

Summary of Position of Interested Parties¹

In a Federal Register notice,² the Commission invited interested parties to file written submissions regarding the Commission's investigation *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic* (Inv. No. 332-503). The Commission held a public hearing for this investigation on November 18, 2009. This appendix summarizes the hearing testimony and/or written submissions for each interested party.

American Apparel & Footwear Association³

Stephen Lamar, executive vice president of the American Apparel and Footwear Association (AAFA), said that the AAFA is a national trade association that represents the apparel and footwear industries and their suppliers who produce and market sewn products throughout the United States and the world. Mr. Lamar submitted a post-hearing statement stating that the AAFA strongly supports the Earned Import Allowance Program (EIAP). Mr. Lamar said that the program, "if properly implemented, can help generate new business" and "benefit the entire U.S. and Dominican textile and apparel supply chain."⁴ He noted, however, that since the program's enactment, a dispute has arisen over the definition of the term "wholly formed" with respect to "qualifying woven fabric."⁵ He said that the AAFA opposes an interpretation of the "wholly formed" provision that would require dyeing and finishing to be done in the United States, as has been proposed by the U.S. Department of Commerce (Commerce).

Mr. Lamar said that "wholly formed" should not include dyeing and finishing operations for the following reasons:

- (1) The EIAP legislation has no reference to dyeing and finishing, nor is there any evidence of Congressional intent to that effect. In other trade preferences programs, such as the Caribbean Basin Trade Partnership Act (CBTPA) and the Andean Trade Promotion Drug Eradication Act (ATPDEA), additional language was inserted to clarify an additional requirement related to the fabric once it is wholly formed. The absence of language specific to a dyeing and finishing requirement in the CBTPA and ATPDEA prompted Congress to add language to establish a dyeing and finishing requirement.
- (2) During numerous discussions with officials and representatives in the U.S. and Dominican public and private sectors (including textile and apparel companies) that led to the creation of the program, the issue of dyeing and finishing was never addressed. Further, there were no efforts to seek a definition for "wholly formed" that would encompass dyeing and finishing.

¹ The views summarized are those of the submitting parties and not the Commission. 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 App. B.

³ AAFA, written submission to the USITC, November 30, 2009.

⁴ AAFA, written submission to the USITC, November 30, 2009.

⁵ AAFA, written submission to the USITC, November 30, 2009.

- (3) If the issue had been considered that important during discussions, it would have been raised and discussed repeatedly, and specific language on this point would have been included.⁶

Mr. Lamar indicated that the Dominican trouser industry has been under considerable pressure during the past few years. He stated that the purpose of the EIAP was to provide this industry with relief through an additional duty-free market access mechanism that would still involve U.S. fabrics and U.S. yarns. He said that delays in implementing the program have diminished its benefit for Dominican trouser producers and for U.S. textile companies, and he urged Commerce to reject any “after the fact” arguments to define “wholly formed” to include dyeing and finishing.⁷

American Manufacturing Trade Action Coalition, National Council of Textile Organizations, and National Textile Association⁸

The American Manufacturing Trade Action Coalition (AMTAC), National Council of Textile Organizations (NCTO), and National Textile Association (NTA) submitted a joint prehearing statement. The statement said that the three associations represent the U.S. textile industry. It asserted that the countries of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR) have become “one of the most important export markets for U.S. [fabrics] manufacturers,” especially the Dominican Republic, which has “excelled in the manufacture of high-quality, competitively priced trousers for many years.”⁹ The statement expressed the view that while the CBTPA and CAFTA-DR were initially successful in encouraging Dominican use of U.S. fabrics, the global economic recession and “shifting sourcing patterns” have caused business in the Dominican Republic to move to Asian sources.¹⁰ The statement said that the programs, in addition to promoting the use of U.S. fabrics in the Dominican Republic, had expanded the range of cotton fabrics available to Dominican manufacturers while lowering their average costs.

The three associations acknowledged recent challenges to the definition of “wholly formed,” but expressed support for the current Commerce definition, which includes dyeing and finishing.¹¹ They described the dyeing and finishing process as “the highest value-added process in the production of fabric,” serving as the “strength of the U.S. textile industry.”¹²

The statement concluded by explaining that the U.S. textile industry supported the creation of the EIAP with the understanding that “a dyeing and finishing requirement would be part of the definition of wholly formed,” without which industry support “would have collapsed immediately.”¹³ The three associations further indicated that

⁶ AAFA, written submission to the USITC, November 30, 2009.

⁷ AAFA, written submission to the USITC, November 30, 2009.

⁸ AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

⁹ AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

¹⁰ AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

¹¹ AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

¹² AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

¹³ AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

should the dyeing and finishing requirement be removed from the definition of “wholly formed,” the U.S. textile industry would “actively oppose” renewing the EIAP.¹⁴ Finally, citing the brief existence of the EIAP, they urged that any decisions regarding its expansion be deferred until more data become available.

Consejo Nacional de Zonas Francas de Exportación¹⁵

In a prehearing statement, Luisa Fernandez Durán, executive director of the Consejo Nacional de Zonas Francas de Exportación (CNZFE), said that CNZFE is the official Dominican Republic authority responsible for the regulation of Dominican law on export free zones and the application of zone regulations. She described the purpose of the EIAP as “maintain[ing] the competitiveness of the apparel manufacturers in the Dominican Republic.”¹⁶ She described the EIAP as an important way to stimulate both the U.S. textile industry and Dominican apparel manufacturers in difficult economic conditions.

Ms. Durán noted the importance of the apparel industry to the Dominican economy and said that apparel accounts for 40 percent of employment in Dominican Export Processing Zones. She expressed concern over the weakened state of the Dominican apparel industry in 2008, when employment dropped by 15 percent, 27 percent of plants closed, and exports decreased by 16 percent.

She said that the Commerce interpretation of “wholly formed” to require qualifying woven fabrics to be dyed and finished in the United States “severely undermines the intention and effectiveness” of the EIAP as well as the textile and apparel industries in both countries and will further prevent them from absorbing the full intended benefits of the EIAP.¹⁷

D’Clase Apparel International¹⁸

Steven Litton, director of D’Clase Apparel International in the Dominican Republic, presented testimony and submitted a post-hearing statement. He said that D’Clase manufactures jeans, denimwear, and casual pants in 11 facilities in the Dominican Republic for export to the United States.¹⁹

Mr. Litton stated that the EIAP has been “very helpful” to his company once the company became familiar with the program’s processes and paperwork requirements and that, without the program, D’Clase would be half its current size, if it were still in business at all.²⁰ He reported that his company had established credits with which it could export apparel made from non-U.S. fabric from the start of the program in August 2007. Mr. Litton noted the competitive environment in which his company operates and said

¹⁴ AMTAC, NCTO, and NTA, written submission to the USITC, November 2, 2009.

¹⁵ CNZFE, written submission to the USITC, November 3, 2009.

¹⁶ CNZFE, written submission to the USITC, November 3, 2009; “National Free Zones Council,” 2009, http://www.cnzfe.gob.do/ingles/del_cnzfe_i.html.

¹⁷ CNZFE, written submission to the USITC, November 3, 2009.

¹⁸ USITC, hearing transcript, November 18, 2009; D’Clase Apparel International, written submission to the USITC, December 2, 2009.

¹⁹ “D’Clase Apparel International website,” <http://www.fashiondex.com/contractors/international/jad2.php> (accessed May 20, 2010).

²⁰ USITC, hearing transcript, November 18, 2009, 18, 85.

that “pennies and nickels” can make “a lot of difference” to his company, even if the price of a certain piece of apparel is as low as \$20 or as high as \$100.²¹ He indicated that his company’s customers benefit from using an apparel manufacturer located closer to the U.S. market, as opposed to manufacturers in Asia, which he said is helpful to D’Clase because it cannot compete with Asian producers on a cost basis.²²

Mr. Litton described his company’s current use of its EIAP credits as enabling lower-cost apparel production that, possibly as soon as the fall of 2010, may not be as available because the necessary credits will not be earned quickly enough. He gave as an example the higher cost of using U.S. fabric in manufacturing alone (\$3.50 per yard), compared to using fabric under the EIAP ratio of 2 for 1 (\$3.17 per yard) and foreign fabric alone (\$2.50 per yard), to illustrate D’Clase’s rising cost pressures as its available credits decline.²³ He also offered an example of a pair of pants that would cost \$0.61 more if made with U.S. fabric instead of Asian fabric under the EIAP, which he said “can be the difference” in whether his company receives the order.²⁴

Mr. Litton stated that the EIAP had strengthened business relations between U.S. fabric producers and Dominican pant producers and other pant fabrics of cotton or cotton/polyester blends could “certainly” be used if they were included in the program.²⁵ He urged that the ratio of square meters equivalent (SMEs) of U.S. fabric for each SME of third-country fabric be lowered from 2 for 1 to 1 for 1 and that U.S. greige fabric finished in the region qualify for credit as U.S. fabric.²⁶

Dominican Association of Free Trade Zones²⁷

José Torres, executive vice president of the Dominican Association of Free Trade Zones (ADOZONA), said that ADOZONA is a not-for-profit organization representing the apparel industry in the Dominican Republic. In a pre-hearing submission and in hearing testimony, he characterized the rural employment opportunities created by the textile sector as important to Dominican economic and social stability.²⁸ He described the difficulties experienced by the Dominican apparel industry over the past few years owing to the U.S. economic contraction and an increase in competition from Asia. He said that the trouser sector was most heavily affected, experiencing a decline in output of nearly 75 percent during 2004–08.²⁹ Mr. Torres indicated that the EIAP was intended to “offset part of the [Dominican apparel] industry decline.”³⁰ He noted that, without the assistance of the EIAP, the Dominican apparel industry would have to rely solely on Asian fabrics, which would harm U.S. textile manufacturers and would in effect eliminate the existing speed-to-market advantage of apparel made in the Dominican Republic.³¹

²¹ USITC, hearing transcript, November 18, 2009, 19.

²² USITC, hearing transcript, November 18, 2009, 19–20, 77.

²³ USITC, hearing transcript, November 18, 2009, 31, 55, 80.

²⁴ D’Clase Apparel International, written submission to the USITC, November 2, 2009.

²⁵ USITC, hearing transcript, November 18, 2009, 56, 62–63.

²⁶ D’Clase Apparel International, written submission to the USITC, November 2, 2009.

²⁷ USITC, hearing transcript, November 18, 2009; ADOZONA, written submission to the USITC, November 2, 2009.

²⁸ USITC, hearing transcript, November 18, 2009, 13.

²⁹ ADOZONA, written submission to the USITC, November 2, 2009.

³⁰ USITC, hearing transcript, November 18, 2009, 16.

³¹ USITC, hearing transcript, November 18, 2009, 14.

According to Mr. Torres, the main impediment to successful implementation of the EIAP is the Commerce interpretation of “wholly formed” to require qualifying woven fabrics to be dyed and finished in the United States, which undermines “the intention and effectiveness” of the EIAP for the apparel industries in both countries.³² He reported that, in 2009, purchases of U.S. woven fabric eligible for the EIAP decreased by 21 percent from the 2008 level. Mr. Torres further cited a 34 percent decrease in exports of apparel from the Dominican Republic to the United States over the same period.³³

In conclusion, to increase the effectiveness of the EIAP, Mr. Torres proposed expanding its scope in the following three ways: (1) lower the ratio of SMEs of U.S. fabric for each SME of third-country fabric from 2 to 1 to 1 to 1; (2) include a larger selection of eligible U.S. fabrics; and (3) allow dyeing and finishing activities in other Central American Free Trade Agreement countries. According to Mr. Torres, ADOZONA believes that implementing these changes will “substantially increase the level of business generated in the region, resulting in a win-win situation for both” the U.S. and Dominican industries.³⁴ Mr. Torres also commended the administration of the EIAP, characterizing the online system as “both accurate and friendly.”³⁵

Fishman and Tobin, Inc.³⁶

Fishman and Tobin, Inc., described itself as one of the largest producers in the Dominican Republic of apparel made of U.S. fabric. In a prehearing statement, it characterized the EIAP as “ineffective” owing directly to the Commerce interpretation that “U.S. wholly formed fabric must also be dyed and finished” in the United States.³⁷ Fishman and Tobin objected to this definition of “wholly formed” fabric for the following reasons:

- (1) The EIAP legislation does not refer to dyeing and finishing, and there is no evidence of Congressional intent to that effect. In other trade preferences programs, such as the CBTPA, the ATPDEA, and the African Growth and Opportunity Act (AGOA), additional language was inserted to clarify an additional requirement related to the fabric once it is wholly formed. The absence of language specific to a dyeing and finishing requirement in the CBTPA and ATPDEA prompted Congress to add language to establish a dyeing and finishing requirement.
- (2) Because there is no direct-shipment requirement for exports of qualifying U.S. fabric to the Dominican Republic, dyeing and finishing of U.S. greige fabric do not conflict with the terms of the EIAP.
- (3) Given that the EIAP is a “free standing unilateral preference program” rather than an amendment to the CAFTA-DR, the CAFTA-DR definition of wholly formed fabric does not apply to the program.³⁸

³² USITC, hearing transcript, November 18, 2009, 15.

³³ ADOZONA, written submission to the USITC, November 2, 2009.

³⁴ USITC, hearing transcript, November 18, 2009, 18.

³⁵ USITC, hearing transcript, November 18, 2009, 17.

³⁶ Fishman and Tobin, Inc., written submission to the USITC, November 2, 2009.

³⁷ Fishman and Tobin, Inc., written submission to the USITC, November 2, 2009, 1.

³⁸ Fishman and Tobin, Inc., written submission to the USITC, November 2, 2009, 5.

- (4) A similar earned import allowance program that does not require fabric dyeing or finishing to take place in the United States exists for Nicaragua. Therefore, enforcing this requirement for goods made in the Dominican Republic would be discriminatory.

According to Fishman and Tobin, the dyeing and finishing requirement has “drastically reduced the anticipated additional purchases and exports of U.S. formed fabric of U.S. yarn.”³⁹ Should the dyeing and finishing requirement continue, Fishman and Tobin foresees discontinuing the program because sourcing fabric from the United States will no longer be “economically feasible.”⁴⁰ In conclusion, Fishman and Tobin urged Commerce to define “wholly formed” to exclude dyeing or finishing operations.

Galey and Lord, Inc. d/b/a Swift Galey⁴¹

Carlos Moore, founder and president of AM&S Trade Services, LLC, presented testimony on behalf of Galey & Lord, Inc., doing business as Swift Galey. He said that Swift Galey is the major dyer and finisher of cotton trouser fabrics in the United States and a major exporter of that fabric to the Dominican Republic. Mr. Moore reported “significant interest” in recent months from both new and existing customers of Swift Galey in participating in the EIAP because of the lower-cost advantages of apparel imports under the program, as well as the proximity of Dominican manufacturers to the U.S. market and their quick turnaround on orders.⁴² As background information on the EIAP’s creation, he provided data showing increasing imports of Chinese and Bangladeshi cotton trousers (following the expiration of applicable quotas in 2004 and safeguard measures in 2009), which contrasted with decreasing imports of cotton trousers from the Dominican Republic during this period.⁴³ To support his statement about the EIAP’s impact, he provided figures indicating that the amount of SMEs of qualifying U.S. fabric registered to the program almost doubled during the first three months of reporting in 2009, to 3.1 million SMEs.⁴⁴ He characterized these statistics as the “best benchmarks” for measuring the effectiveness of the program.⁴⁵

Mr. Moore stated that Swift Galey’s major export markets for its finished fabrics are the Dominican Republic, Mexico, Colombia, Nicaragua, and other countries in the region because of their proximity to the U.S. market, quick turnaround capability, and availability of credit. He described the EIAP as creating a “competitive situation” for those markets.⁴⁶ He further noted that U.S. production of cotton twill fabric declined by approximately one-half from 2005 to 2008, to 145 million SMEs, and described the EIAP as the type of program that “can really slow that decline.”⁴⁷

³⁹ Fishman and Tobin, Inc., written submission to the USITC, November 2, 2009, 7.

⁴⁰ Fishman and Tobin, Inc., written submission to the USITC, November 2, 2009, 6–7.

⁴¹ USITC, hearing transcript, November 18, 2009; Swift Galey, written submission to the USITC, November 18, 2009.

⁴² Swift Galey, written submission to the USITC, November 18, 2009; USITC, hearing transcript, November 18, 2009, 25.

⁴³ Swift Galey, written submission to the USITC, November 18, 2009; USITC, hearing transcript, November 18, 2009, 23–24.

⁴⁴ Swift Galey, written submission to the USITC, November 18, 2009; USITC, hearing transcript, November 18, 2009, 24–25.

⁴⁵ USITC, hearing transcript, November 18, 2009, 29.

⁴⁶ USITC, hearing transcript, November 18, 2009, 76.

⁴⁷ USITC, hearing transcript, November 18, 2009, 95.

Mr. Moore stated that the purposes of the EIAP were to improve the competitiveness of Dominican trouser manufacturers and to provide new market opportunities for U.S. yarn spinners, weavers, and finishers of qualifying fabrics.⁴⁸ Although noting that any changes to the program must be consistent with the original intent of the program, he said that (1) the program could be enhanced by expanding eligible fabrics to include denim apparel, under the belief that cotton trouser imports would increase as well;⁴⁹ (2) any extension of program benefits to fabrics finished in countries other than the United States would violate the intent of the program and diminish its value; and (3) Swift Galey would support the inclusion of other CAFTA countries in the EIAP.

Scott D. Quesenberry

Scott D. Quesenberry, a former special textile negotiator at the Office of the United States Trade Representative (2005–09), stated in his hearing testimony that trade between the United States and the Dominican Republic, of which the Dominican pants industry is an integral part, has declined precipitously since 1996. The United States became aware that urgent action was necessary to preserve economies of scale for the Dominican apparel industry in 2006, after CAFTA negotiations on rules of origin for pocket bag fabrics revealed considerable problems facing Dominican producers of apparel inputs.

Mr. Quesenberry said that the EIAP was designed with a straightforward enforcement mechanism and minimal implementation requirements. Mr. Quesenberry praised Congressional efforts in drafting and promptly passing the EIAP legislation. He credited Congress' inclusion of all stakeholders at the negotiating table with arriving at a final text that reflects language agreed on by consensus.

Mr. Quesenberry acknowledged two unresolved issues remaining in the EIAP: the use of wholly formed fabrics in finishing and dyeing, and expansion of the program to include additional parties. Mr. Quesenberry asserted that the negotiator for the EIAP did not intend that finishing would be allowed outside of the United States.⁵⁰ Regarding expansion of the agreement, Mr. Quesenberry indicated that a draft had been sent to the other Central American parties to the CAFTA-DR when it was passed at the end of the Bush administration. Mr. Quesenberry stated that, to his knowledge, these countries have not yet responded.

Mr. Quesenberry expressed support for including the other CAFTA countries in subsequent negotiations. In his view, such negotiations would allow all parties to achieve their objectives: addressing where finishing is done, deciding whether to include other Central American fabric producers, determining which other fabrics should be included, and resolving potential World Trade Organization concerns about the EIAP as a unilateral preference.

⁴⁸ Swift Galey, written submission to the USITC, November 18, 2009; USITC, hearing transcript, November 18, 2009, 23.

⁴⁹ USITC, hearing transcript, November 18, 2009, 26, 47–48.

⁵⁰ USITC, hearing transcript, November 18, 2009, 11.

APPENDIX D
Calendar of Public Hearing

CALENDAR OF PUBLIC HEARING

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

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

Inv. No.: 332-503

Date and Time: November 18, 2009 - 9:30 a.m.

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

ORGANIZATION AND WITNESS:

Scott D. Quesenberry, Former Special Textile
Negotiator, Office of the United States
Trade Representative

ADOZONA
Dominican Republic

Jose Manuel Torres, Executive Vice President

D'Clase Apparel International
Dominican Republic

Steven Litton, Director

AM&S Trade Services, LLC
Washington, D.C.
on behalf of

Galey and Lord, Inc. d/b/a Swift Galey

Carlos Moore, President

-END-