

DEPARTMENT OF COMMERCE

International Trade Administration

Imports of Certain Apparel Articles: Interim Procedures for the Implementation of the Earned Import Allowance Program Established Under the Food, Conservation, and Energy Act of 2008.

ACTION: Interim Procedures, Request for Comments

SUMMARY: The Department of Commerce is issuing interim procedures implementing provisions under the Food, Conservation, and Energy Act of 2008 (“the Act”), enacted in its entirety by Congress on June 18, 2008. Title XV, Subtitle D, Part I of the Act contains amendments to the special rules for apparel and other textiles from Haiti in Section 213A(b) of the Caribbean Basin Economic Recovery Act (“CBERA”) (19 U.S.C. 2703a(b)), including rules enacted in 2006 by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (“HOPE”). These amendments are also cited as the “Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008” (“HOPE II”). Under Section 15402 of the Act, Section 213A(b) of CBERA is amended by creating a benefit for apparel wholly assembled or knit-to-shape in Haiti that meets a “3 for 1” earned import allowance. The amendment requires the Secretary of Commerce to establish a program to provide earned import allowance certificates to any producer or entity controlling production of apparel in Haiti, such that apparel wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, regardless of their source, and imported directly from Haiti or the Dominican Republic may enter the United States duty-free, pursuant to the satisfaction of the terms governing issuance of the earned import allowance certificate by the

producer or entity controlling production of apparel in Haiti.

DATES: These interim procedures are effective as of September 30, 2008. Although these procedures are not subject to the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(b)(A) (“Administrative Procedures Act”), Commerce will consider written comments received by 5:00 p.m. on [INSERT DATE **60** DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Comments should be addressed to: R. Matthew Priest, Deputy Assistant Secretary for Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce is issuing interim procedures implementing Section 15402 of the Act, which was enacted in its entirety by Congress on June 18, 2008. Title XV, Subtitle D, Part I of the Act contains amendments to the special rules for apparel and other textiles from Haiti in Section 213A(b) of CBERA (19 U.S.C. 2703a(b)), including rules enacted in 2006 by HOPE. These amendments are also cited as HOPE II.

Under Section 15402 of the Act, Section 213A(b) of CBERA is amended by creating an uncapped benefit for apparel wholly assembled or knit-to-shape in Haiti that meets a “3 for 1” earned import allowance. The Act requires that the Secretary of Commerce establish an Earned

Import Allowance program under Section 213A(b) such that apparel wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabrics, fabric components, components knit-to-shape or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate (“certificate”) that reflects the amount of credits equal to the total square meter equivalent (“SME”) of such apparel articles, in accordance with the program outlined below. The Secretary of Commerce has delegated his authority under the Act to implement and administer the Earned Import Allowance program to the International Trade Administration’s Office of Textiles and Apparel (“OTEXA”).

This notice sets forth the interim procedures OTEXA will follow in implementing the provisions of HOPE II and the Earned Import Allowance program. In accordance with these procedures, OTEXA will issue certificates to qualifying apparel producers to accompany imports of apparel wholly formed or knit-to-shape in Haiti and exported from Haiti or the Dominican Republic. Such certificates will be issued as long as there is sufficient balance of SMEs available as a result of the purchase of qualifying woven fabrics or qualifying knit fabrics, as defined below, intended for production in Haiti. OTEXA, promptly upon promulgation of these interim procedures, intends to begin the process of opening and administering qualifying apparel producers’ accounts to issue certificates as appropriate.

These procedures may be modified in the future to address concerns that may arise as OTEXA gains experience in implementing them. Pursuant to the Secretary’s delegation of authority, OTEXA may reconsider, and/or subsequently amend, any determination to deposit credits or request to issue certificates that may have been procured by error, fraud, or similar faults.

Interim Procedures:

1. Introduction: OTEXA will issue a certificate to any producer or entity controlling production in Haiti (“qualifying apparel producer”) based on the following elements: (1) One SME credit shall be issued to a qualifying apparel producer for every three SMEs of qualifying woven fabric or qualifying knit fabric that the qualifying apparel producer can demonstrate that it purchased for the manufacture in Haiti of apparel wholly assembled or knit-to-shape in Haiti. SME quantities are to be calculated by the use of the appropriate conversion factor, defined below. OTEXA shall, as requested by a qualifying apparel producer, create and maintain an account for such qualifying apparel producer, into which such credits shall be deposited. (2) Such qualifying apparel producer may redeem credits for certificates reflecting such number of credits as the qualifying apparel producer may request and has available. Requests for deposits of credits for purchases of qualifying woven fabrics and qualifying knit fabrics as well as redemption of said credits for earned import allowance certificates will be made through a dedicated on-line system, known as the Haiti HOPE II Earned Import Allowance Online System (“HOPE II online system”).

2. Definitions:

- a. The Act:** The Food, Conservation, and Energy Act of 2008.
- b. Conversion Factor:** 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.

c. Imported Directly from Haiti or the Dominican Republic: Articles are “imported directly from Haiti or the Dominican Republic” if –

(1) the articles are shipped directly from Haiti or the Dominican Republic into the United States without passing into the territory of any intermediate country; or

(2) the articles are shipped from Haiti or the Dominican Republic into the United States through the territory of an intermediate country, and –

(A) the articles in the shipment do not enter into the commerce of any intermediate country, and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

(B) the invoices and other documents do not specify the United States as the final destination, but the articles in the shipment –

(i) remain under the control of the customs authority in the intermediate country;

(ii) do not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) have not been subjected to operations in the intermediate country other than loading, unloading, or other activities necessary to preserve the articles in good condition.

d. Knit-to-Shape: A good is “knit-to-shape” if 50 percent or more of the exterior surface area of the good is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliqués, or the like. Minor cutting, trimming, or sewing of those major

parts shall not affect the determination of whether a good is “knit-to-shape.”

- e. **Qualifying Apparel Producer:** An individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the apparel production process in Haiti; or an individual, corporation, partnership, association or other entity that is not a producer and that controls the apparel production process in Haiti through a contractual relationship or other indirect means.
- f. **Qualifying Knit Fabric:** For the purposes of these procedures, the term “qualifying knit fabric” means fabric or knit-to-shape components wholly formed or knit-to-shape in any country or any combination of countries described in Section 213A(1)(B)(iii) of CBERA, as amended by the Act, from yarns wholly formed in the United States, purchased on or after October 1, 2008, expressly for production of apparel in Haiti, except that:
 - (1) fabric or knit-to-shape components otherwise eligible as qualifying knit fabric shall not be ineligible as qualifying knit fabric because the fabric or knit-to-shape components contain nylon filament yarn to which Section 213(b)(2)(A)(vii)(IV) of CBERA applies;
 - (2) fabric or knit-to-shape components that would otherwise be ineligible as qualifying knit fabric because the fabric or knit-to-shape component contains yarns not wholly formed in the United States shall not be ineligible as qualifying knit fabric if the total weight of all such yarns is not more than 10 percent of the total weight of the fabric or knit-to-shape component; and
 - (3) fabric or knit-to-shape components otherwise eligible as qualifying knit fabric shall not be ineligible as qualifying knit fabric because the fabric or knit-to-shape components contain yarns covered by the short supply provisions of

Section 213A(b)(5) of CBERA, as amended by the Act.

g. Qualifying Woven Fabric: For the purposes of these procedures, the term “qualifying woven fabric” means fabric wholly formed in the United States from yarns wholly formed in the United States, purchased on or after October 1, 2008, expressly for production of apparel in Haiti, except that:

- (1) fabric otherwise eligible as qualifying woven fabric shall not be ineligible as qualifying woven fabric because the fabric contains nylon filament yarn to which Section 213(b)(2)(A)(vii)(IV) of CBERA applies;
- (2) fabric that would otherwise be ineligible as qualifying woven fabric because the fabric contains yarns not wholly formed in the United States shall not be ineligible as qualifying woven fabric if the total weight of all such yarns is not more than 10 percent of the total weight of the fabric; and
- (3) fabric otherwise eligible as qualifying woven fabric shall not be ineligible as qualifying fabric because the fabric contains yarns covered by the short supply provisions of Section 213A(b)(5) of CBERA, as amended by the Act.

h. Wholly Assembled: A good is “wholly assembled” in Haiti if all its components, of which there must be at least two, pre-existed in essentially the same condition as found in the finished good and were combined to form the finished good in Haiti. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, and buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, and pockets), shall not affect the determination of whether a good is “wholly assembled” in Haiti.

3. Submitting a Request to Open an Account: A qualifying apparel producer, as defined in section 2(e) of these procedures, may request that OTEXA open an account to which records of purchases of qualifying woven fabric or qualifying knit fabric, as defined in sections 2(g) and 2(f) of these procedures, may be deposited toward a balance from which to draw certificates. Such request should be made online, via the HOPE II online system, located on the OTEXA website. In making a request to open an account, the qualifying apparel producer must provide:

- a.** The full name and address of the qualifying apparel producer;
- b.** All designated contacts and contact information, and any designees authorized to have access to the account; and
- c.** A statement affirming the accuracy and authenticity of the information submitted to OTEXA.

Once the application has been received by the HOPE II online system and reviewed and approved by OTEXA, the qualifying apparel producer will be assigned a unique user identification number, and a password to enable future access to its online account. The qualifying apparel producer may request to update contact and designee information in its account at any time through the HOPE II online system.

4. Submitting a Request to Deposit Credits. A qualifying apparel producer with an existing account may submit a request to deposit credits for purchases of qualifying woven fabric or qualifying knit fabric. The request must contain the following information:

- a.** The name of the qualifying apparel producer;
- b.** A complete description of the qualifying woven fabric or qualifying knit fabric;

- c. The quantity, in SMEs, of the qualifying woven fabric or qualifying knit fabric;
- d. A statement that the qualifying woven fabric or qualifying knit fabric is intended for the production of apparel in Haiti; and
- e. Supporting documentation: documentation, which, in their totality includes:
 - (1) the U.S. manufacturer of the qualifying woven fabric or qualifying knit fabric;
 - (2) the full description of the fabric in question, including any non-U.S. components or inputs and their manufacturer;
 - (3) if the fabric consists wholly or in part of knit-to-shape components, the manufacturer of said components, and documentation indicating that U.S. yarns were used in the production of said components;
 - (3) the name of the qualifying apparel producer as the ultimate consignee; and
 - (4) that the fabric purchased is intended for production of apparel in Haiti.
- f. An affirmation from the qualifying apparel producer as to the accuracy and authenticity of the information provided.

The request must be submitted via the Hope II online system. All supporting documentation must be submitted either electronically via the Hope II online system, or via fax to 202-482-0858 or 202-482-2331. OTEXA will review the request and supporting documentation and shall make a determination whether to approve or deny the request to deposit credits. Should there be insufficient information with which to make a determination, OTEXA may request additional information from the qualifying apparel producer, the manufacturer of the fabric or components at issue, or any other entity identified in supporting documentation, as provided by section 6.

5. Submitting a Request for an Earned Income Allowance Certificate. A qualifying

apparel producer may request the issuance of a certificate via the HOPE II online system. The qualifying apparel producer must log on to the HOPE II online system to access its account, and submit a request to redeem credits and be issued a certificate. As long as there are sufficient credits available, a certificate will be automatically generated by the HOPE II online system, and the credits will be automatically withdrawn from the qualifying apparel producer's account. If there are insufficient credits in the qualifying apparel producer's account, the request for a certificate will automatically be denied by the HOPE II online system.

6. Verification of Submitted Information. OTEXA may, at any time, verify the information submitted by a qualifying apparel producer or its designee. OTEXA may require any textile mill or other entity located in the United States that exports to Haiti qualifying woven fabric or qualifying knit fabric to submit, upon such export or upon request, documentation to OTEXA: (a) verifying that the qualifying woven fabric or qualifying knit fabric was exported to a producer in Haiti or to an entity controlling production; and (b) identifying such producer or entity controlling production, and the quantity and description of qualifying woven fabric or qualifying knit fabric exported to such producer or entity controlling production. OTEXA may also require that a producer or entity controlling production submit documentation to verify purchases of qualifying woven fabric or qualifying knit fabric. OTEXA may make available to each person or entity identified in documentation submitted under these provisions information contained in the documentation that relates to the purchase of qualifying woven fabric or qualifying knit fabric involving such person or entity. OTEXA may establish and impose penalties for the submission to OTEXA of fraudulent information under this program,

other than a claim under the customs laws of the United States or under title 18, United States Code.

- 7. Contact Information:** Questions regarding the Earned Import Allowance program or the HOPE II online system may contact OTEXA via email at OTEXA_HaitiHOPE2@mail.doc.gov, or by phone to the Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

R. Matthew Priest

Chairman, Committee for the Implementation of Textile Agreements

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