Textile Trade Policy

Textile trade policy continues to have a substantial impact on the U.S. textile industry, both in terms of opportunities to export textiles and the pressures brought to bear by imported textiles and apparel. The U.S. currently has several free trade agreements and trade preference programs in force and continues negotiations on several others. Below is a short history of various agreements that relate to U.S. textile trade.

AGOA

The African Growth and Opportunity Act (AGOA) provides preferential access of textile and apparel products to the U.S. market for qualifying countries in Africa. AGOA is currently set to expire at the end of September 2015.

In January 2015, a delegation of trade ministers from Africa were in Washington, DC to urge quick action on the renewal of AGOA. The trade ministers would like quick renewal of AGOA to prevent apparel buyers from sourcing elsewhere due to any uncertainty caused by AGOA not already being renewed. The Administration and AGOA countries have discussed possible improvements to AGOA, including simplified rules of origin and expansion of the list of products eligible for duty-free access. The delegation said they were assured by key House and Senate lawmakers that AGOA would be renewed.

The AGOA legislation requires an annual determination of which countries are eligible to receive benefits under the trade act. Countries must make continued progress toward a market-based economy, rule of law, free trade, and economic policies that will reduce poverty, and protect workers' rights. There are now 38 countries that are eligible for economic and trade benefits under AGOA. Of those 38 Sub-Saharan countries, 26 of them are eligible to receive AGOA's apparel benefits. Twenty-eight countries also qualify for the LDC special rule for apparel (third-country fabric). In August of 2012, the AGOA third-country fabric provision was extended through September 30, 2015. Nineteen countries also qualify for AGOA's provisions for hand-loomed and handmade articles. Seven countries qualify for AGOA's ethnic printed fabric benefits.

CAFTA-DR

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) includes the participating countries of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua.

According to the provisions of the CAFTA-DR agreement, textiles and apparel are duty-free and quota-free if they meet the agreement's yarn-forward rule of origin. This means that only apparel using yarn and fabric from the U.S., Central America and the Dominican Republic qualifies for duty-free benefits.

The textile provisions also include a number of avenues for 3rd-country participation, including 'cumulation', Tariff Preference Levels (TPLs) which authorize the use of a specified quantity of 3rd country components, a fabric-forward rule of origin for certain products and allowances for 'single transformation' for a number of others.

The signatories of CAFTA-DR agreed to cumulation with Mexico and Canada for woven apparel. This allows a limited amount of inputs from Mexico and Canada to be used in Central American/Dominican apparel that will still qualify for duty-free benefits in the U.S. Cumulation under CAFTA-DR is subject to an annual cap of 100 million SME. This cap can grow to 200 million SME, but the growth is tied to an increase in CAFTA-DR trade. Mexico and Canada must provide reciprocal benefits to U.S. and Central American textile and apparel exports. On March 1 2012, the Dominican Republic lost cumulation eligibility. The Dominican Republic was only granted cumulation eligibility in regards to inputs from Mexico. In order to keep this eligibility the Dominican Republic had to conclude a free trade agreement with Mexico and provide written notification to all parties of the CAFTA-DR that the Dominican Republic and Mexico have taken actions necessary to provide reciprocal application of the rule. This had to be completed within 5 years from the date CAFTA-DR entered into force. The 5-year period expired on March 1, 2012 and the Dominican Republic had not concluded a free trade agreement with Mexico.

The TPLs for CAFTA-DR cumulation for the period of January 1, 2014 through December 31, 2014 was 100,000,000 SME. During that time, imports applied to this preference level equaled 18,586,819 SME, implying an 18.6% fill rate. The TPLs for CAFTA-DR cumulation for the period of January 1, 2015 through December 31, 2015 is 100,000,000 SME.

An amendment regarding pocketing material became effective in August 2008. Under this CAFTA-DR amendment, material for pockets going into apparel made in the CAFTA region have to be made in the U.S. or CAFTA countries for the product to enter the U.S. duty free. CAFTA-DR provides Nicaragua with a TPL of 100 million SME which phases out over 10 years. CAFTA-DR does not contain TPLs for El Salvador, Honduras or Guatemala. Nicaragua agreed that for each SME of exports of cotton and man-made fiber woven trousers entered under the TPL, Nicaragua would export to the U.S. an equal amount of cotton and man-made fiber woven trousers made of U.S. formed fabric of U.S. formed yarn. Any shortfall in meeting this commitment that was not rectified by April 1 of the succeeding year would be applied against the TPL for the succeeding year. For 2011, the shortfall in meeting the one-to-one commitment was 3,470,941 SME. This amount was deducted from the 2012 TPL, resulting in a new 2012 TPL level of 96,529,059 SME. During the 2012 preference period, 96,529,059 SME of imports were applied to this TPL, implying a 100% fill rate. During the 2013 preference period, 98,447,866 SME of imports were applied to this TPL, implying a 100% fill rate. During the 2014 preference period, 84,499,199 SME of imports were applied to this TPL, implying an 84.5% fill rate.

CAFTA-DR provides Costa Rica with TPLs for certain apparel of wool fabric, tailored wool apparel, and certain women's swimwear. Combined, these TPLs were 1,133,823 SME for the 2014 preference period. During this period, 59,776 SME of imports were applied to these TPLs, implying an 5.3% fill rate.

CAFTA-DR contains a special textile safeguard which allows the U.S. to impose tariffs on certain goods when injury occurs due to import surges. A safeguard cannot last more than 3 years for a specific good.

The agreement also contains a revised short supply process that includes tighter timelines than in earlier short supply processes, allows items to be deemed in partial short supply, and provides for items to be added to and removed from the short supply list.

Andean Countries

The U.S. – Peru TPA entered into force on February 1, 2009. Under the U.S. – Peruvian agreement, textile and apparel provisions are based on the yarn-forward rule of origin. There are no provisions for TPLs or exceptions to the requirement that qualifying products contain components manufactured in the U.S. or Peru. As in NAFTA, a list of components not manufactured in either country has been developed and only those products may be sourced from a third country.

On November 22, 2006, the U.S. – Colombia Trade Promotion Agreement was signed. On June 28, 2007, the United States and Colombia signed a Protocol of Amendment revising the Agreement to reflect the bipartisan consensus on trade of May 10, 2007. The U.S. – Colombia TPA was ratified by the U.S. Congress on October 12, 2011, and signed by President Obama on October 21, 2011. The agreement was implemented on May 15, 2012.

Under the U.S. – Colombia agreement, over 80% of U.S. exports of consumer and industrial products to Colombia were duty-free immediately, and an additional 7% will be duty free within five years. All remaining tariffs will be eliminated within ten years. The textile and apparel provisions are generally based on the yarn-forward rule of origin. Exceptions to the rules of origin will be handled through an expedited "short supply" determination process. The U.S. and Colombia agreed on 20 "short supply" items as part of the agreement. The agreement does not make use of TPLs. A "de minimis" provision will allow limited amounts of specified third-country content to go into U.S. and Colombian apparel. Also, a special textile safeguard will provide for temporary tariff relief if imports under the agreement prove to be damaging to domestic producers.

Colombia, Peru, Ecuador, and Bolivia received duty-free benefits under the Andean Trade Preference Act (ATPA). As part of the Trade Act of 2002, Congress renewed and enhanced the trade preferences for all four countries under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which was scheduled to expire on December 31, 2006, but has been extended several times. The most recent extension was enacted on November 5, 2011. It extended tariff preference programs for Colombia and Ecuador through July 31, 2013. Peru was not included because it has a free trade agreement with the U.S. that has already been implemented. As of May 15, 2012, only Ecuador is eligible for ATPDEA benefits because the U.S.-Columbia agreement has been implemented.

Haiti

The Haitian Hemispheric Opportunity through Partnership for Encouragement Act (HOPE) provides expanded duty-free, quota-free access to certain apparel products assembled in Haiti. To qualify, Haitian products are required to have 50% of the value of the finished product be provided by the U.S., Haiti, any U.S. Free Trade Agreement partner or any country in AGOA, Andean and CAFTA regions.

HOPE provides that the annual quantity of goods eligible for duty-free benefits will be recalculated for each subsequent 12-month period. HOPE also provides that the annual limit for qualifying apparel imported from Haiti under this provision for the 12-month period beginning on December 20, 2007 will not exceed 1.3% of the total SME of all apparel articles imported into the U.S. from Haiti in the most recent 12-month period for which data are available. The 12-month limit on duty-free benefits for the one-year period beginning on December 20, 2013 and extending through December 19, 2014 was 322,629,971 SME. During that time period, 25,910,670 SME were attributed to the limit, implying a fill rate of 8.0%.

The 2008 Farm Bill included amendments to rules enacted by the HOPE Act. These amendments are referred to as the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II). HOPE II extends tariff preferences for 10 years and relaxes rules of origin for textile and apparel products from Haiti. It creates 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.

In May 2010, President Obama signed into law the Haiti Economic Lift Program Act (HELP). HELP was designed to help Haiti's economy recover from the devastating earthquake which occurred there in January 2010. HELP expanded existing preferences for apparel and established new preferences for certain non-apparel textile goods. With the exception of the Value-Added TRQ, which expires in December 2018, HELP extended existing trade preference programs for Haiti through September 2020. Key HELP act provisions increase current TPLs for certain knit and woven apparel products.

Panama

The U.S. – Panama Free Trade Agreement was signed on June 28, 2007. It was ratified by the U.S. Congress on October 12, 2011, and signed by President Obama on October 21, 2011. The U.S. – Panama TPA was implemented on October 31, 2012.

The U.S.-Panama FTA adheres to a yarn-forward rule of origin, meaning that qualifying textile and apparel products must be made using U.S. or Panamanian yarns and fabrics. Goods that meet the rule of origin qualify for immediate duty-free market access upon entry into force of the Agreement.

Consistent with other free trade agreements, elastomeric yarns, narrow elastic fabrics, pocketing fabric, thread, and visible linings must be sourced from the region for use in textile and apparel products that qualify for duty free entry.

Similar to CAFTA-DR, a streamlined commercial availability (short supply) determination process will allow yarns or fabrics that are deemed not commercially available in the region to be

used in the production of apparel. Also, a textile-specific safeguard mechanism allows for temporary Most Favored Nation tariffs if a surge in imports threatens to cause serious damage to the domestic industry.

Korea

On April 1, 2007, the final day for Congressional notification under Trade Promotion Authority (TPA), the United States concluded a Free Trade Agreement with South Korea. This agreement was signed on June 30, 2007, the last day it could be signed and still be considered under TPA which expired on the same day. The agreement (referred to as the KORUS FTA) was ratified by Congress on October 12, 2011 and signed by President Obama on October 21, 2011. The KORUS FTA entered into force on March 15, 2012.

Under the KORUS FTA, all qualifying U.S. footwear and non-textile travel goods entering into Korea were duty-free immediately. Duties on the majority of qualifying U.S. textile and apparel products exported to Korea were eliminated upon entry into force of the agreement. The remainder will be eliminated in three or five year stages. Qualifying footwear and non-textile travel goods from Korea will be duty-free into the United States under KORUS, except for a few rubber/fabric and plastic/protective footwear items. Duties on these items will remain at base rates during years one through eight. Beginning on January 1 of year nine, duties will be reduced in four equal annual stages, and then will be duty-free, effective January 1 of year 12.

The KORUS adopts a “yarn forward” rule of origin, which requires that the yarn production and all operation forward occur in either South Korea or the United States, but the fiber may be from anywhere. However, there are some exceptions in the rules requiring "fiber forward," and some requiring "fabric forward". Also, there are consultative processes to amend the rules of origin should any fiber, yarn or fabric not be commercially available in the U.S. or South Korea. If a good does not meet the rule of origin requirements, a textile or apparel product might be considered originating if all non-originating fibers and yarns make up less than a "de minimis" seven percent of the total weight of the product.

The KORUS FTA includes a special textile safeguard mechanism which provides for temporary re-application of MFN tariffs, if imports under the agreement increase either absolutely or relative to the domestic market, and are shown to be causing or threatening to cause serious damage to the domestic industry. The safeguard can only be implemented for two years, with the possibility of extension for an additional two years, up to ten years.

Trans-Pacific Partnership

In mid-December 2009, the USTR announced that the U.S. will negotiate a trade agreement with the Trans-Pacific Partnership (TPP). The initial TPP negotiation partners included Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, and Vietnam. Malaysia joined the negotiations in October 2010. In addition, Canada, Mexico, Japan and Thailand expressed interest in joining the talks. In June of 2012, the U.S. and the other eight countries negotiating the TPP extended an invitation to Mexico and Canada to join the TPP negotiations, pending successful conclusion of their domestic procedures. Canada and Mexico participated in the negotiations for the first time in December 2012 in New Zealand. By September 2013, Japan had joined the negotiations. Negotiations on the TPP continued in 2013 among the 12 negotiating

partners of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. In addition, South Korea expressed interest in November 2013 of joining TPP.

TPP ministers met numerous times in 2013 with the final 2013 round occurring in Singapore in December. After negotiations in December, ministers stated they identified potential “landing zones” for the majority of the key outstanding issues in the TPP text. Following additional work by negotiators, ministers intended to meet again in January 2014.

During the negotiations which occurred in December 2012, the U.S. offered a new approach for negotiating market access for textiles and apparel that would allow for more exceptions to the yarn-forward rule of origin it has proposed. Under the new proposal, the general rule for apparel in the TPP would be a yarn-forward rule of origin, but there would be two short supply lists – a permanent list and a temporary one. The permanent list would include textile inputs that are never expected to be produced in the TPP region. The temporary list would last for three years and would include textile inputs that are currently not produced in the region but are expected to be in the future. Apparel made from items on either list would be subject to a cut-and-sew rule of origin instead of a yarn-forward rule.

Trade associations representing the U.S. textile industry have opposed certain aspects of the TPP. NCTO has opposed the inclusion of Vietnam in the TPP due to unfair and anti-competitive subsidies, labor and environmental rules. In 2011, Rep. Gowdy (R-SC) organized a letter co-signed by 51 members to the USTR urging the inclusion of strong rules of origin for textiles in the TPP negotiations to reduce the risk to the U.S. textile and apparel industry from Vietnam's inclusion. The co-signers included three specific recommendations: 1) establish special market access rules, given Vietnam's non-market economy status and inherent advantages provided to its textile and apparel sectors; 2) adopt the basic yarn-forward rule of origin for textiles and apparel with no loopholes; and 3) strengthen customs rules. The House members also encouraged USTR to handle textiles and apparel in a separate negotiating group.

In February 2012, the Textile and Apparel Alliance for TPP (TAAT) coalition, which includes trade groups from 30 countries, was formed to show support for the U.S. negotiation position on textiles after Vietnam proposed country-of-origin rules for textiles and apparel that are much weaker than those in current U.S. FTAs and preference programs. Instead of the yarn-forward rule that is a part of many U.S. trade agreements, Vietnam is insisting on “single transformation” in TPP. Under the “single transformation” rule goods only have to be assembled in Vietnam but the textile components can come from non-TPP participating countries, such as China, and the finished product could still be exported to TPP countries duty free. According to TAAT, “single transformation” would allow Vietnam’s state-owned enterprises (SOEs) to export textiles and apparel made from subsidized inputs produced by China’s massive textile SOEs duty free to other TPP countries. Also, the competitive advantage gained by Vietnam’s SOEs would shift business to them at the expense of privately-owned and financed textile and apparel producers in the United States and elsewhere in the NAFTA, CAFTA and AGOA trade blocs, thereby harming potential for new textile and apparel export markets for U.S. producers and those of FTA partners. Moreover, China, the largest textile and apparel exporter in the world and a

country not participating in the TPP, would gain substantial new access to the U.S. market without having to make trade concessions in return.

In May 2012, seventy-six U.S. representatives sent a letter to USTR Ambassador Kirk stressing the need for job-creating textile rules in the TPP. The letter stated that the TPP negotiations are particularly important because they include Vietnam which has experienced dramatic growth in their textile and apparel exports to the U.S. in recent years fueled by Vietnam's large state-owned, state-subsidized apparel sector. According to the letter, without strong textile rules in TPP, Vietnams' state-subsidized companies could damage the U.S. domestic textile industry and those in countries with which the U.S. currently has free trade agreements and trade preference programs. Three objectives mentioned in the letter involved a yarn-forward rule of origin, market access rules which take into account Vietnam's non-market economy status and anti-competitive advantages provided to their state-owned textile and apparel sector, and strong customs enforcement rules.

Negotiations on the TPP continued in 2014 among the negotiating partners of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. In addition, South Korea expressed interest in November 2013 of joining TPP, but its membership has not materialized.

TPP leaders met numerous times in 2014 with the final 2014 meeting occurring in Beijing in November. According to the United States Trade Representative (USTR), significant progress was made in the areas of market access, services and investment, and government procurement in 2014. Further negotiations are planned for 2015.

Transatlantic Trade and Investment Partnership (TTIP)

In June 2013, President Obama announced that the United States and the European Union (EU) would begin negotiations on the Transatlantic Trade and Investment Partnership (TTIP). The first round of negotiations were held in July 2013 in Washington, DC and were followed by a second round of negotiations in Brussels in November. In December 2013, a third round of negotiations were held in Washington, DC. During this round, negotiating groups focusing on services; market access; competition; trade facilitation; sectoral issues; investment; textiles; labor and environment; intellectual property rights, and technical barriers to trade continued their work.

Negotiating teams for the United States and the European Union (EU) conducted four rounds of negotiations on TTIP in 2014. During the G20 Summit meeting in Australia in November 2014, President Obama and EU leaders reaffirmed their commitment to "an ambitious, comprehensive, and high standard" TTIP agreement. Further negotiations are expected in 2015.

Trade Promotion Authority

On January 9, 2014, Finance Committee Chairman Baucus (D-MT), Ranking Member Hatch (R-UT) and Ways and Means Committee Chairman Camp (R-MI) introduced legislation -- the Bipartisan Congressional Trade Priorities Act of 2014 -- that would have provided so-called Trade Promotion Authority (TPA) or fast-track for four years. However, the legislation was not enacted in the last Congress. If enacted, the legislation would have allowed free trade agreements

negotiated in compliance with the legislation's provisions to be presented to Congress for approval by an up-or-down vote without amendments.

In addition to allowing the Administration to submit trade agreements for up-or-down votes without amendments, the legislation laid out negotiating objectives for trade agreements in areas such as currency, state-owned enterprises, investment, labor, environment, agriculture, services and intellectual property rights. The negotiating objectives in the legislation specifically urged the White House to include a provision in future trade agreements that would direct countries to "avoid manipulating currency rates."

The legislation demanded enforceable rules on sanitary and phyto-sanitary measures, which regulate how countries apply measures for food safety and animal and plant health.

The legislation also included provisions to require that all members of Congress have access to negotiating texts and can observe trade talks. These later negotiating objectives were designed to respond to criticism that the negotiations have been less than transparent. The proposed legislation would have allowed Congress to vote to deny fast-track procedures if a trade agreement does not meet the negotiating objectives.

In President Obama's 2015 State of the Union Address, he offered specific comments on the Administration's pursuit to gain TPA from Congress this year. While a large majority of Republicans in the House and Senate are expected to support TPA, there appears to be few Democrats currently willing to support TPA, meaning the Administration will have to ramp up its lobbying efforts to build more support among House and Senate Democrats. In January, Senate Finance Committee Chairman Orrin Hatch (R-Utah) stated that he is working with his committee ranking member Senator Ron Wyden (D-Ore), as well as the chairman of the House Ways and Means Committee, Rep. Paul Ryan, (R-Wis) to consider possible improvements to TPA. Some reports have indicated they may introduce a TPA bill in the very near future, perhaps February, and move the bill through their committees, preparing it for floor action once there is sufficient support for passage.

It is generally accepted that TPA is essential to gain approval of both the TPP and TTIP free trade agreements. Congress last passed a trade promotion authority bill in 2002. Authority to negotiate trade agreements under that bill expired in 2007. President George W. Bush used the authority to negotiate trade agreements with nearly 15 countries, including South Korea, Colombia and Panama. Three of those agreements were approved with bipartisan support in 2011, during President Obama's first term.