COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designation under the Textile and Apparel Commercial Availability Provision of the African Growth and Opportunity Act (AGOA), the Andean Trade Promotion and Drug Eradication Act (ATPDEA), and the U.S. - Caribbean Basin Trade Partnership Act (CBTPA)

May 5, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Designation.

EFFECTIVE DATE: May 11, 2005.

SUMMARY: CITA has determined that certain ring spun single yarns of English yarn number 30 and higher of 0.9 denier or finer micro modal fibers, classified in subheading 5510.11.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in women's and girls' knit apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA, and the CBTPA. CITA hereby designates such apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing such yarns as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States. CITA also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in women's and girls' knit apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns; such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States. CITA notes that this designation under the ATPDEA renders women's and girls' knit apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country containing such yarn as eligible for quota-free and duty-free treatment under HTSUS subheading 9821.11.13, provided the requirements of that subheading are met.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The commercial availability provisions of the AGOA, the ATPDEA, and the CBTPA provide for duty free and quota free treatment for apparel articles that are both cut (or knit to shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamations 7350 and 7351 of October 4, 2000 and Presidential Proclamation 7616 of October 31, 2002, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002, CITA was authorized to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA.

On December 27, 2004, CITA received a request alleging that certain ring spun single yarns of English yarn number 30 and higher of 0.9 denier or finer micro modal fibers, described above, for use in women's and girls' knit apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA and the CBTPA. It requested that such apparel articles containing such yarns be eligible for preferential treatment under the AGOA, the ATPDEA, and the CBTPA. On January 3, 2005, CITA requested public comment on the petition. See Request for Public Comments on Commercial Availability Petition under the African Growth and Opportunity Act (AGOA), the United States - Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), 70 FR 80 (January 3, 2005). On January 19, 2005, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On January 19, 2005, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On February 7, 2005, the U.S. International Trade Commission provided advice on the request.

Based on the information and advice received and its understanding of the industry, CITA determined that the yarn set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On February 25, 2005, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA, the ATPDEA, and the CBTPA.

CITA hereby designates women's and girls' knit apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing ring spun single yarns of English yarn number 30 and higher of 0.9 denier or finer micro modal fibers, classified in HTSUS subheading 5510.11.0000, as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112(d) of the AGOA and section 211 (vii) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible AGOA or CBTPA beneficiary country.

CITA also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in women's and girls' knit apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns. Such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 204(b)(3)(B)(vi) of the ATPDEA, and that such articles are imported directly into the customs territory of the United States from an eligible ATPDEA beneficiary country.

An ''eligible beneficiary sub Saharan African country'' means a country which the President has designated as a beneficiary sub Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722), resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTSUS.

An ''eligible ATPDEA beneficiary country'' means a country which the President has designated as an ATPDEA beneficiary country under section 203(a)(1) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3202(a)(1)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 203(c) and (d) of the ATPA (19 U.S.C. 3202(c) and (d)), resulting in the enumeration of such country in U.S. note 1 to subchapter XXI of Chapter 98 of the HTSUS.

An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the Caribbean Basin Recovery Act (CBERA) (19 U.S.C. 2703(b)(5)(B)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)), resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

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COMMODITY FUTURES TRADING COMMISSION

Amendment of Interpretation

SUMMARY: Section 4d(a)(2) of the Commodity Exchange Act (''CEA'') and related Commission regulations (hereinafter collectively referred to as ''segregation requirements'') require that all funds received by a futures commission merchant (''FCM'') from a customer to margin, guarantee, or secure futures or commodity options transactions and all accruals thereon be accounted for separately, and not be commingled with the FCM's own funds or used to margin the trades of or two extend credit to any other person.[1] Further, Section 4d(a)(2) has been construed to require that customer funds, when deposited with any bank, trust company, clearing organization or another FCM, be available to the FCM carrying the customer account upon demand.[2]

In Financial and Segregation Interpretation No. 10, the Division of Trading and Markets (predecessor to the Division of Clearing and Intermediary Oversight (''Division'')) first addressed the issue of whether customer funds may be deposited at a bank in a safekeeping or custodial account (otherwise known as ''safekeeping account'' or ''third-party custodial account''), in lieu of posting such funds directly with an FCM, without being deemed to violate the segregation requirements.[3] Because Section 17(f) of the Investment Company Act of 1940,[4] at the time, was interpreted by Securities and Exchange Commission (''SEC'') staff to generally bar registered investment companies (''RICs'') from using FCMs and futures clearinghouses as custodians of fund assets, it was decided that the use of third-party custodial accounts should not be banned altogether and that Section 4d(a)(2) should be interpreted to permit customer funds to be held in such accounts, subject to standards designed to ensure the carrying FCM's right of immediate access to customer funds. Since the issuance of Interpretation No. 10, a change in the law governing the custody of fund assets now allows RICs, with a limited exception, to post customer funds with an FCM.[5] Because it is no longer necessary for most RICs to use third-party custodial accounts to engage in futures transactions, coupled with evidence of significant risks that may impair immediate and unfettered access by FCMs, the use of third-party custodial accounts is no longer justified or appropriate, except in the limited case where the FCM is precluded from holding RIC assets.[6] Accordingly, Interpretation No. 10 is being amended and FCMs will not be viewed as being in compliance with the requirements of Section 4d(a)(2) if they deposit, hold, or maintain margin funds for customer accounts in third-party custodial accounts, except that those FCMs not eligible to hold the assets of their RIC customers (*i.e.,* due to their affiliation with the RIC or its adviser) may use such accounts under conditions specified herein.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Carlene S. Kim, Senior Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone: (202) 418–5613.

SUPPLEMENTARY INFORMATION:

I. Background: Section 4d and Interpretation No. 10

Section 4d(a)(2) of the CEA and related Commission regulations require that all funds received by an FCM from

[1] *See* note 7, *infra.*

[2] *See* note 8, *infra.*

[3] Financial and Segregation Interpretation No. 10, Treatment of Funds Deposited in Safekeeping Accounts, Comm. Fut. L. Rep. (CCH) ¶ 7120 (May 23, 1984) (''Interpretation No. 10''). While specifically directed to third-party accounts of pension plans and registered investment companies, the views expressed in the interpretation applied equally to any other customer of an FCM (*e.g.,* an insurance company).

[4] *See* note 12, *infra.*

[5] SEC Rule 17f–6, adopted 1996, permits RICs to deposit customer margin directly with FCMs and futures clearing houses. *See* Rule 17f–6, 17 CFR 270.17f–6, under the Investment Company Act, 15 U.S.C. 80a.

[6] In February 2005, a notice was published in the **Federal Register** soliciting comments on a withdrawal of Interpretation No. 10 (''Notice of Proposed Withdrawal''). *See* 70 FR 5417 (February 2, 2005). In response thereto, the Commission received comments from the following entities: Investment Company Institute (''ICI''); National Futures Association (''NFA''); The Joint Audit Committee (''JAC''); Futures Industry Association (''FIA''); and AIG Series Trust (''AIG''). ICI and AIG opposed a withdrawal of Interpretation No. 10; NFA, JAC, and FIA supported a withdrawal of Interpretation No. 10 and an outright prohibition of third-party custodial accounts. The comment letters are available on the Internet at *http://www.cftc.gov/files/foia/comments05.*