Before the

U.S. INTERNATIONAL TRADE COMMISSION

Washington, D.C.

Investigation Nos. AGOA-002/AGOA-003: Commercial Availability of Fabric and Yarns in AGOA Countries

Statement Submitted By
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This statement is respectfully submitted by the African Coalition for Trade (ACT) in connection with the April 9, 2008 hearing before the U.S. International Trade Commission (Commission) in Investigation Nos. AGOA-002/AGOA-003: Commercial Availability of Fabric and Yarns in AGOA Countries.

ACT is a non-profit trade association of African private sector companies and trade associations that are involved in trade with the United States under the African Growth and Opportunity Act (AGOA). Most of the leading African textile and apparel producers doing business under AGOA are members of ACT. In particular, all of the major producers of denim fabric in Africa are members of ACT, including: Nien Hsing of Lesotho, Denim de l'Ile (DDI) of Mauritius, RS Denim of Mauritius, and Frame Textiles of South Africa. In addition, a number of the leading African manufacturers of denim garments are also members of ACT. Thus, the views expressed in this statement reflect the positions of all African denim fabric producers and many of the leading garment producers of Africa.

The present investigation is focused on determining (1) the volume of African-origin denim fabric that was consumed during 2006-07 in the AGOA less developed country (LDC) beneficiaries in producing denim garments for export to the United States; and (2) the volume of African-origin denim fabric that will be commercially available to LDC garment makers during 2008-09. Each of these issues, as well as relevant policy considerations, are discussed below.

I. AGOA LDC Denim Consumption During 2006-07

In the African Investment Incentive Act of 2006 (AIIA), Congress amended AGOA Section 112(c)(2) to add the new commercial availability provision, 19 U.S.C. 3721(c)(2), including the statutory determination that denim fabric classified under Harmonized Tariff Schedule (HTS) subheading 5209.42.00 (hereinafter referred to as the "subject denim") was commercially available in the AGOA LDCs during October 1, 2006 – September 30, 2007, in the amount of 30 million square meter equivalents (sme).

We understand that the Commission has distributed questionnaires to the denim garment manufacturers located in AGOA LDC countries to compile data on the volume of African-origin denim fabric consumed in producing garments for export to the United States during 2006-07. Complementing the data being compiled from LDC garment manufacturers, ACT suggests that the Commission should also look to the volume of regional denim fabric sold to LDC garment manufacturers as another important source of data on the volume of denim fabric consumed during 2006-07.

As illustrated in the attached table, which ACT has compiled from its members that are denim manufacturers, a total of approximately 51.585 million sme of denim fabric was produced in Africa during 2006-07, of which 50.453 million sme was sold to third parties or consumed in vertically integrated operations. The balance was held in inventory by the manufacturers.

Of the total volume of African-origin denim sold or consumed during 2006-07, at least 22.3 million sme – or a little less than half – was sold or consumed in AGOA LDCs in making garments for export to the United States. The remainder was either used in making garments for either the local African market or the EU market or was sold to customers outside Africa.

During 2006-07, Nien Hsing was the only African manufacturer of denim fabric whose production was sold to or consumed in AGOA LDCs in making garments for export to the United States. DDI's production was either consumed in Mauritius – a non-LDC AGOA beneficiary – or was sold to customers in the EU. Likewise, Frame's denim fabric production was consumed within South Africa – another non-LDC – in making garments for either the local South African market or for export to the EU. RS Denim, the newest African denim producer whose factory opened in early 2008, did not have commercial production of denim fabric during 2006-07.

The total volume of African-origin denim that was actually consumed during 2006-07 in AGOA LDCs in making garments for export to the United States, however, is probably somewhat greater than the 22.3 million sme produced and sold or consumed by Nien Hsing. This is because of two factors.

First, the China Garment Manufacturers (CGM) Group owned and operated a denim fabric plant in South Africa during 2000-2007. The denim fabric produced by that plant was largely consumed in CGM's jeans factory in Lesotho. In 2007, however, CGM closed its denim fabric factory. Nevertheless, some portion of CGM's 2006-07 denim fabric production was consumed in Lesotho in making jeans for export to the United States during 2006-07. Although CGM is a member of ACT, they have not responded to our requests for information on their denim fabric production and consumption during 2006-07. Accordingly, the data in the attached table on 2006-07 LDC denim consumption probably understates the total because it does not include CGM's production and sales/cosumption.

Second, garment makers in AGOA LDCs are likely to have acquired inventory of fabric prior to October 1, 2006, that was consumed during 2006-07, some portion of which is likely to have been of regional origin. The responses by garment manufacturers to the Commission's questionnaires would be the best source of information on such use of inventoried regional denim fabric.

In summary, the volume of African-origin denim fabric consumed in the AGOA LDCs in making garments for export to the United States during 2006-07 is at least 22.3 million sme, plus the amount of CGM production and inventoried regional fabric consumed during 2006-07.

II. Commercially Available African Denim During 2008-09

In its Post-Hearing Brief, filed June 19, 2007, in Investigation No. AGOA-07, ACT suggested that the Commission should consider the volume of the subject denim that was actually produced in Africa and used by apparel manufacturers in AGOA LDCs during the previous 12-month period as the starting point for determining the volume of the subject denim that will be commercially available in the LDCs in the subsequent 12-month period. The fact that a certain volume of denim was actually used by LDC apparel manufacturers in their production of denim garments exported to the United States, which can be readily confirmed, is *a fortiori* evidence that the fabric was reasonably competitive in both price and quality, thereby confirming that the fabric was *commercially* available.

In its September 25, 2007 determination that 21.3 million sme of African-origin denim would be available in the AGOA LDCs during 2007-08, the Commission recognized the utility of past denim fabric consumption data as an indicator of the volume expected to be commercially available during the succeeding 12-month period. ACT endorses the Commission's reliance on such past consumption data and urges the Commission to examine 2007-08 denim production and sales data as one of the best indicators of the volume of such fabric that is expected to be available during 2008-09.

As demonstrated in the attached table, total African denim fabric production for 2007-08 is expected to be 66.229 million sme. Of this, 28.2 million sme is expected to be available to LDC garment makers. This increase of 5.9 million sme over actual 2006-07 consumption of 22.3 million sme is due to the opening of the new RS Denim factory in Mauritius. RS Denim expects to produce 13.5 million sme of denim fabric during 2007-08, of which it expects to sell 5.9 million sme to AGOA LDCs and 7.1 million sme will be consumed in Mauritius, a non-LDC. As was also true during 2006-07, neither DDI nor Frame expects to sell any denim to LDC garment companies producing for export to the United States during 2007-08.

Thus, assuming that RS Denim's sales predictions develop as expected, 28.2 million sme of regional denim should be consumed by AGOA LDCs during 2007-08 in making garments for export to the United States. It is reasonable to expect, therefore, that 28.2 million sme of regional denim will be commercially available in the LDCs during 2008-09.

III. Policy Considerations.

The commercial availability provision enacted in the AIIA in December 2006 was intended to enhance the competitiveness of the African apparel industry in the face of the increased competition that followed the end of the Multi-Fiber Arrangement (MFA) in 2005, by encouraging increased vertical integration. The commercial availability provision has already demonstrated that is an effective tool in attracting new investment in upstream fabric production, as is illustrated by the opening earlier this year of the new

RS Denim plant, which has added significant new denim fabric production capacity to the African textile industry.

On the other hand, the risk that garments made in AGOA LDCs from third-country denim fabric might lose duty-free eligibility if the denim use obligation is not met for two consecutive years has prompted some U.S. jeans importers to reduce or even suspend their orders from Africa. This is precisely the opposite effect that the commercial availability provision was intended to have.

The Commission's determination in September 2007 that 21.3 million sme of regional denim would be available to the AGOA LDCs during 2007-08 has led to speculation that the Commission is likely to find that actual denim consumption during 2006-07 in the AGOA LDCs was approximately 21.3 million sme. As noted above, ACT's own data indicates that consumption in the LDCs during 2006-07 was 22.3 million sme plus any consumption of CGM production and inventory of regional denim fabric. Thus, many observers expect there will be a shortfall of approximately 7.7-8.7 million sme from 2006-07, which will be carried forward and added to the existing 2007-08 use obligation of 21.3 million sme, producing a new use obligation of approximately 30 million sme for 2007-08.

However, as demonstrated by the attached table and as discussed above, it seems likely that no more than 28.2 million sme of regional denim fabric will be available to the AGOA LDCs during 2007-08. Accordingly, there is a serious risk that the commercial availability provision has created a denim fabric consumption obligation that will be impossible to meet. This was certainly not Congress' intent.

The problem stems from the AIIA's statutory determination that 30 million sme of regional denim would be available in the AGOA LDCs in 2006-07. On the contrary, we now know that only 22.3 million sme was actually available in the AGOA LDCs in 2006-07. ACT urges the Commission to explore all possible alternatives to avoid creating a use obligation that will be impossible to satisfy. Although we acknowledge that the Commission lacks the authority to amend the AIIA's determination that 30 million sme was available in 2006-07, the Commission has wide discretion in determining the volume of denim fabric that was used during 2006-07 and/or that will be commercially available in future years. ACT encourages the Commission to exercise that discretion so as to avoid the unintended imposition of impossible use obligations that will harm, not help, the competitiveness of the African apparel industry.

Finally, time is of the essence. Orders in the apparel industry are typically placed three to six months in advance of the delivery date. Because the loss of duty-free status for jeans made in AGOA LDCs from third-country denim, if it occurs, would be effective October 1, 2008, U.S. jeans importers are already being faced with the decision whether to risk the loss of duty-free eligibility under AGOA or, alternatively, whether to place their orders elsewhere. ACT urges the Commission to make its 2006-07 use and 2008-09 availability determinations as quickly as possible in order to provide more clarity to the

U.S. jeans importers and, hopefully, thereby to enable the African apparel industry to retain their orders in Africa.

In conclusion, ACT and its members in the textile and apparel industries in Africa believe that the AGOA commercial availability provision and the denim provision in particular need to be interpreted and applied by the Commission in a fair and balanced way that takes into account the policy goal of enhancing the competitiveness of the African apparel industry by encouraging greater vertical integration while maintaining critical mass in a healthy apparel sector.

ACT and its members appreciate the ITC's consideration of these suggestions, and are available to provide any additional information that may be required.

Respectfully submitted,

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