

NCTO is pleased to comment on Haiti's eligibility for benefits under the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act. Under the Caribbean Basin Initiative (CBI) and its successor program, the Caribbean Trade Partnership Act (CBTPA), Haiti has been an important export market for U.S. textile products – totaling nearly \$200 million a year. These programs have been relatively simple to enforce because of the requirement that U.S. yarns and fabrics are utilized in apparel receiving duty-free access to the U.S. market. NCTO is extremely concerned that under the HOPE, U.S. mills could lose substantial business if the United States government and the Haitian government do not appropriately administer the customs regulations required under this new program.

Given the prominent industry concerns regarding the difficulties of correctly administering a new value-added textile program and Customs long history of concerns regarding fraud under such a program, NCTO was surprised that USTR did not request comments on the Customs Enforcement component of the HOPE program. The legislation clearly states that preferential treatment “shall not apply unless the President certifies to Congress that Haiti is meeting the following conditions [concerning Customs enforcement].¹” The legislation lays out six steps that Haiti must take before the President may certify that Haiti is to receive preferential benefits. We also note that the legislation clearly does not require that this step be taken within 90 days of the bill's passage; this makes abundant good sense as the development of effective customs rules and capabilities takes time and the potential for fraud is great.

Given the concerns that have already been raised about fraud and the new value-added system, NCTO urges USTR to ask for comments about this specific aspect of the legislation. In addition, Haiti must not be certified under the Customs compliance measures until Customs has put into place a comprehensive program of enforcement. An important part of this program will be introduction of new measures and programs, as required by the new law, regarding enforcement by Haitian government.

Customs certification, which took some AGOA countries over a year to receive, is critical to the proper functioning of the program. Furthermore, it is not beneficial to Haiti or anyone else if this new program becomes a magnet for fraud as it has in other textile and apparel programs involving value added rules. Indeed, Customs reports that because of its relatively high tariffs, fraud occurs in textiles and apparel far more than any other category of goods.

As preference programs have proliferated and Customs seizures have increased, Customs enforcement has been an increasing issue of concern for the domestic industry and this concern has been increasingly tied to industry support for free trade programs. The issue was central to the industry's support for the CAFTA agreement; at that time, the industry insisted that Administration meet the funding obligations for textile and apparel that had been earlier set out in TPA legislation. Since that time, Customs has been re-organized in a manner that takes the textile enforcement division off the front lines and puts in an advisory role. This move was strongly opposed by the industry. In addition, the new HOPE legislation creates new and

¹ xxx

significant burdens for textile enforcement and the Administration has not indicated how or whether it will provide resources to meet those burdens. Finally, the prospect of an FTA with Korea creates even more resource questions. As these problems proliferate, it becomes increasingly difficult for the industry to support trade liberalization programs, even when the rules themselves are good, if there is no real prospect that effective enforcement will occur.

Prior to reviewing the six steps required under the legislation, NCTO would like to review its overall concerns regarding proper enforcement of the HOPE legislation. When the Haiti legislation was introduced, NCTO had numerous discussions with U.S. Customs and Border Protection (CBP) regarding its ability to enforce the HOPE bill as is currently envisioned by H.R. 6142. In our discussions, CBP repeatedly expressed strong concerns that the value-added rules of origin contained in the proposal are would be difficult to enforce. CBP officials based these conclusions on their experience with value-added rules currently in place for textiles and apparel in the Egypt and Jordan QIZs and the Israel FTA. Finally, prior to NAFTA, the Canadian FTA had a value-added rule for textiles and apparel but this was converted to a transformation rule in NAFTA because of enforcement concerns and the resource limitation of CBP.

In the history of the textile program, unenforceable rules have been a proven access point for large scale fraud which displaces legitimate production both in the U.S. and in the country involved. As already noted, textile and apparel trade has the highest fraud content of any manufactured good.

NCTO remains very concerned that an improperly enforced rule will jeopardize nearly \$200 million in current textile exports to Haiti and, because of the high-volume of trade allowed under the caps, will threaten another \$400 million in exports to the CAFTA region. We are also concerned that the program, if not aggressively enforced, will do damage to legitimate producers in Haiti and in the region because it creates incentives for illegal imports to enter the market at lower price points thereby displacing existing trade.

Review of the principle concerns raised by U.S. Customs:

1. **Value-added rules:** Value-added rules are almost impossible to enforce in textiles and apparel because of the complexity and differentiation of the wide number of products that fall under it. Apparel comes in dozens of forms, multiple shapes and sizes and in hundreds of types of fabrics and fiber contents. Under a value added formula, Customs would need to verify value-added chains for dozens of types of garments, each with dozens of possible variations (type of fabric, type of yarn, sewing thread, trims etc) and each with different labor inputs.

Overhead costs must then be sub-divided by the type of garment produced, a very difficult task in factories that are typically producing several different types of garments at one time and potentially dozens of different types of garments over a year's time. In sum, development of such an intensive program is extremely difficult given the resources that Customs has available to it. We again note that the HOPE legislation added no new

resources to CBP textile enforcement division while adding considerable new responsibilities.

In addition, the value added rule will require domestic companies who import from Haiti to maintain extensive record keeping but we are concerned that foreign entities may be able to skirt this requirement. Customs audits are required to cover a year's worth of imports, which means that audits, when performed, will be intensive and disruptive. This will upset the competitive balance for legitimate U.S. producers and importers because foreign entities will be beyond the reach of Customs and can "disappear" (eg, rename themselves) if a Customs audit is ordered. These are major concerns that need to be dealt with in regulations to be issued and enforced by Customs and the Haitian government.

2. **Incentive for Abuse:** The incentive to abuse these rules in textiles and apparel is greater than for any other product. Apparel has the highest level of fraud and abuse of any product category: according to Customs records, 85 percent of all Customs seizures are in textiles and apparel. Because average duty rates are relatively high -- 17 percent -- and the incentive to try and get around these duties is high as well. Importers pay billions of dollars in duties each year to bring in goods from Asia and could stand to save hundreds of millions of dollars a year by bringing Asian goods in illegally and declaring them to be of Haitian origin.

We recently saw this happen when a trouser category for ramie trousers went quota free -- all of a sudden, imports of "ramie" trousers increased so rapidly that according to trade statistics nearly every person in America had bought a pair². Once the trade "understands" that Customs cannot enforce a rule, the floodgates open.

3. **Controlling entity:** The HOPE bill contains a new term of art -- "a controlling entity" that appears to be an easy set up for creating shell companies outside of the United States and bring in Asian goods in violation of the legislation. Setting up shell companies is a common practice in the textile and apparel trade because it enables companies to "disappear" if wrong doing is found and then to reappear under new names and thus avoid substantial penalties. This fraud is already widespread in areas where tariffs are high or anti-dumping orders are being enforced. Customs cannot go after the companies or even compel them to open their books because they are not registered in the United States. Under such a structure, the value-added chain becomes even more difficult to enforce because the companies that make the goods in Haiti are not even required to vouch for the accuracy of their records. Customs must make sure that the rules regarding the "controlling entity" do not become a target for widespread abuse.
4. **Aggregation:** The HOPE bill requires that goods be aggregated on a yearly basis. This requires a massive investment of auditing resources, a resource that Customs does not have. The textiles and apparel enforcement branch in Customs consists primarily of

² In the course of one year, 190 million "ramie" trousers in Cat. 847 came in from China after the quota was lifted in 2002. The trousers were actually cotton trousers which were evading quota limits by being mis-declared as ramie trousers.

import specialists, not auditors. Import specialists monitor individual shipments as they reach the dock whereas auditors review a years worth of records and, through value assessments, determine whether the goods meet the value added rule.

We are concerned that Customs does not have the personnel available to audit a quarter billion garments that currently arrive from Haiti each year. In addition, under this rule, any auditing penalties would take a year and a half to go into place and the company would be able to easily change names and avoid charges. The main enforcement arm of the Customs textile enforcement program is essentially cut out as is the main enforcement tool, factory verification visits by trained Customs personnel.

The government must demonstrate that Customs will be given the resources to adequately monitor imports under the new program and prevent fraud and that the Haitian government will likewise devote resources to ensuring that proper auditing records are maintained and scrutinized by Haitian producers.

5. **Cumulation:** Cumulation makes value-added rules even more difficult to enforce: Inputs which may legally contribute to the value-added formula can legitimately come from more than 30 countries. It will be extremely difficult for Customs to accurately monitor whether these goods are actually being produced in one or more of these 30 countries, particularly since many of these countries have historically been used as transshipment points.

In addition, there is a legitimate question as to whether this program is WTO consistent. The U.S. government believes that the proposed program is probably not WTO consistent because it gives benefits to preference partner countries on a selective product basis and therefore upsets the balance of obligations clause in the WTO.

6. **Corruption in Haiti ranks 155 out of 159:** Corruption in Haiti ranks 155 out of 159 on the Transparency International Corruption Index. This raises additional concerns that Haiti itself does not have the capability of enforcing a difficult, complex and easily abused rule. The Textile Enforcement Division has already indicated that CBP will not be sending enforcement personnel to Haiti until safety issues are resolved.

Review of the Customs Steps Haiti Must Take in Order to be Certified

According to the HOPE Act, Haiti must, prior to being certified, have:

- 1) Adopted an effective visa system, domestic laws and enforcement procedures;
- 2) Enacted legislation or regulations that allows US Customs to investigate allegations of transshipments;
- 3) Agreed to report, on a timely basis, on total exports from, and imports into Haiti;
- 4) Agreed to fully cooperate fully with the United States to prevent circumvention;
- 5) Requires all producers and exporters to maintain complete records for five years;
- 6) Agrees to report to US Customs all documents establishing the rule of origin.

As of today, Haiti does not have an effective visa system or any domestic laws covering enforcement of the new HOPE program. In addition, NCTO is aware of no legislation or regulations that Haiti has promulgated concerning access by U.S. Customs inspection teams and we are aware of no reporting systems that have been put in place regarding imports, exports or documents which could substantiate use of the new value added rules.

If the HOPE program is not to encourage fraud, discourage actual investment in Haiti and not unduly harm U.S. textile manufacturers, then the government must follow the dictates of the legislation and require that Haiti demonstrate that it will administer its portions of the program prior to certification. As textile manufacturers are important stakeholders in this program and American jobs could easily be lost if this program is not managed correctly, we look forward to working with the Customs Service and the Administration to ensure that the program is administered according to the law.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Cass Johnson
President