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Comments on the 2008 Miscellaneous Tariff Bill

The African Coalition for Trade (ACT) respectfully submits these comments on the proposed inclusion of H.R. 5059 in the Miscellaneous Tariff Bill (MTB) of 2008. H.R. 5059 consists of two provisions. First, H.R. 5059 would renew the derogation extended to Mauritius under the African Growth and Opportunity Act (AGOA) in the 2004 MTB that allowed Mauritius to use third-country fabric (hereinafter referred to as the "Mauritius LDC derogation"). As explained below, ACT supports including the provision to renew the Mauritius LDC derogation in the MTB.

Second, Section 1(a)(1) of H.R. 5059 would repeal the so-called "commercial availability" provision that was added to AGOA in 2006. ACT concurs that the commercial availability provision, as it applies to denim, is dysfunctional. However, ACT believes the commercial availability provision has merit and should be "fixed" rather than repealed. Accordingly, ACT recommends that the commercial availability provision of H.R. 5059, Section 1(a)(1), should be revised as explained in more detail below.

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 AGOA. Most of the leading African textile and apparel producers doing business under AGOA are members of ACT. In particular, all of the producers of denim fabric in Africa are members of ACT. 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.

I. The Mauritius LDC Derogation Should Be Renewed.

Prior to the end of the Multi-Fiber Arrangement (MFA), AGOA's duty-free preferences had been tremendously successful in spurring increased apparel trade. During 2000-2004, U.S. apparel imports from Africa increased by more than 130%, leading to the creation of an estimated 200,000 jobs in Africa. Following the end of the MFA in 2005, however, U.S. apparel imports from Africa had fallen by a shocking 25% by the end of 2007, leading to the closing of dozens of apparel factories and the loss of an estimated 100,000 jobs.

The post-MFA contraction of the African apparel sector has been especially severe in Mauritius, where more than 30 apparel factories have closed, costing more than 30,000 jobs. That represents fully one-third of the apparel sector jobs Mauritius had before AGOA was enacted. The impact on the Mauritian economy has been staggering because the apparel sector is by far the largest employer in the country. U.S. apparel imports from Mauritius have declined by 52%, so that, today, Mauritius exports substantially less apparel to the United States today than it did before AGOA was enacted.

U.S. Apparel Imports from the AGOA LDCs and Mauritius

Country	2000 (msme)	2007 (msme)	% Growth 2000-2007
Swaziland	7.166	39.841	456.07%
Kenya	12.556	68.791	447.9%
Madagascar	20.495	74.292	262.5%
Lesotho	34.365	95.143	176.9%
Botswana	2.167	5.451	151.6%
Malawi	3.311	5.868	77.2%
Namibia	-0-	8.955	>100%
Ghana	-0-	5.530	>100%
Ethiopia	-0-	2.892	>100%
Uganda	-0-	0.224	>100%
Mozambique	-0-	0.058	>100%
Tanzania	-0-	0.565	>100%
Mauritius	39.771	19.186	-51.8%

On the theory that the AGOA LDCs needed an extra competitive advantage to develop successful apparel industries, the original AGOA allowed the African LDCs to use more available, less expensive yarns and fabric from any origin (“third-country fabric”). The non-LDCs, including Mauritius, however, were limited to using either U.S. or African-origin yarns/fabrics, which has proven to be a serious competitive disadvantage.

Botswana and Namibia were also classified as non-LDCs in the original AGOA and were, therefore, disqualified from using third-country fabric. When it became evident that Botswana and Namibia were not benefiting from AGOA, in the so-called “AGOA II” amendments enacted in 2002, Congress reclassified Botswana and Namibia to LDCs to enable them to compete on equal terms with the LDCs.

Recognizing that Mauritius was actually losing its apparel industry, Congress extended the same relief to Mauritius in the 2004 MTB. However, unlike Botswana and Namibia, which were given permanent LDC status, the 2004 MTB gave Mauritius LDC status only for 12 months, October 2004-September 2005. And in fact, U.S. Customs did not implement the Mauritius LDC provision until March 2005, reducing the benefits to just six months. This temporary LDC status has proven to be far too short to provide the intended transitional assistance to allow the Mauritian apparel industry to adjust to increased competition with the end of the MFA. Rather, apparel exports from Mauritius to the United States have continued to decline, falling by a further 34% since Mauritius’ 2004 LDC derogation expired. Indeed, since the expiration of the 2004 LDC derogation, Mauritian exports of garments made with third-country fabric have essentially disappeared, falling from 14.508 million square meter equivalents (sme) in 2004 to just 880,000 sme in 2007, a shocking decline of 94%.

The initial contraction in the Mauritius apparel sector was caused in large part by the increased competition from China, Bangladesh, Vietnam, Cambodia and other super-efficient Asian apparel producers with the termination of the MFA system of quotas effective January 1, 2005.

Realignment of U.S. Apparel Imports Post-MFA

Country	2004	2007	% Change 2004-2007
World	19,950.996	23,335.117	16.96%
China	2,972.523	8,033.631	170.26%
Bangladesh	941.685	1,354.101	43.80%
Vietnam	777.055	1,273.657	63.91%
India	609.338	867.881	42.43%
Cambodia	634.683	866.625	36.54%
Pakistan	519.282	695.545	33.94%
Sub-Saharan Africa	440.300	332.310	-24.53%
Mauritius	37.332	19.186	-48.61%

With the safeguard quotas on China scheduled to expire at the end of this year, it seems virtually certain that a further concentration of U.S. apparel sourcing will occur. Those traditional suppliers that are at a competitive disadvantage – including Mauritius without access to third-country fabric – will be hard hit and may not survive.

In the long term, Mauritius is committed to restoring its international competitiveness through vertical integration, as is illustrated by the fact that a new denim fabric plant has recently opened in Mauritius. Other similar projects to increase efficiency are also underway. But these new investments will be rendered moot if the apparel sector loses critical mass in the meantime. Obviously, investors will not risk their capital in upstream textile plants if there are not enough downstream apparel customers to utilize the output of yarn and fabric.

Because the apparel factory closings and job losses in Mauritius have continued since its LDC derogation expired in 2005 and will almost certainly worsen when the safeguard quotas on China expire at the end of the year, Mauritius now needs the LDC derogation more than ever. Accordingly, it is respectfully recommended that the provision of H.R. 5059 that would renew the Mauritius LDC derogation under AGOA should be included in the 2008 MTB. Similar legislation was introduced in the 109th Congress by Chairman Rangel and by Chairman Baucus, H.R. 6076 and S. 3904, respectively, but ultimately was not enacted for unrelated reasons.

II. The AGOA Commercial Availability Provision Should Be Corrected.

ACT was one of the originators of the concept that became the AGOA commercial availability provision in the African Investment Incentive Act of 2006, which amended 19 U.S. C. 3721(c)(2) to add a new incentive for using African-origin yarns and fabrics. ACT believes that vertical integration, which is the goal of the commercial availability provision, is the key to the survival of the African apparel industry in the face of intense new competition from China and other Asian apparel giants since the end of the MFA.

As enacted and implemented, however, it is now clear that the commercial availability provision is flawed, particularly as applied to denim. This is because Congress specified in the 2006 amendment that 30 million sme of denim fabric was commercially available in the AGOA LDCs during 2006-07. By contrast, the U.S. International Trade Commission (ITC) determined in September 2007 that only 21.3 million sme of

African denim is available for 2007-08. In that same report, the ITC also implied that it will find that less than 30 million sme - probably not more than 21-22 million sme - of African denim was actually used in the AGOA LDCs during 2006-07. The ITC is scheduled to release its 2006-07 denim use determination in July.

It is obvious, therefore, that Congress and the ITC were using different definitions of what constitutes "commercial availability." As a consequence, there is now a serious risk that jeans made in LDCs using third-country denim fabric will lose duty-free eligibility under AGOA effective September 30, 2008, which will cause major U.S. importers/retailers of denim garments to cease sourcing in Africa. This is certainly not the outcome intended by the proponents of the commercial availability provision.

This same concern prompted Congressman McDermott to propose in H.R. 5059 the repeal of the commercial availability provision. But repealing the entire provision would ignore the success the provision has already had in encouraging vertical integration. For instance, the new RS Denim factory has opened this year in Mauritius in response to the encouragement of the commercial availability provision.

ACT recommends that the commercial availability provision should be revised to eliminate the risk of loss of duty-free benefits. It is the uncertainty over future duty-free eligibility of garments made with third-country denim that has prompted U.S. importers of denim garments to threaten to withdraw from sourcing in Africa. Rather than using the threat of loss of duty-free benefits as a punishment for not using the volume of fabric found to be commercially available in Africa, ACT recommends that the AGOA LDCs should be rewarded for using commercially available fabric. This can be achieved by granting the LDCs an additional year of access to third-country fabric, which otherwise would expire in 2012, for every year in which the available volume of the commercially available fabric is actually used.

Moreover, renewing the Mauritius LDC derogation also helps make the commercial availability provision viable for denim fabric. This is because the significant volume of African-origin denim consumed in making jeans in Mauritius does not count under the commercial availability provision as long as Mauritius is classified as a non-LDC. Once the Mauritius LDC derogation is renewed, however, the African-origin denim used in Mauritius in making jeans for the U.S. market would be included in the commercial availability calculations. The addition of the African-origin denim used in Mauritius in 2006-07 to the use of African-origin denim by other LDCs would probably eliminate the shortfall and the accompanying risk of loss of duty-free eligibility for jeans made with third-country denim.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul Ryberg". The signature is stylized and written in a cursive-like font.

Paul Ryberg
President