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Safeguards on Textile and Apparel Imports from China

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Summary

Textile and apparel import data issued in June 2006 indicated that from January-April 2006, the volume of U.S. imports from China grew by 4.84% compared to the same time period in 2005. The volume of U.S. imports from the world grew by 1.06% during the period.

U.S. textile and apparel production has been steadily declining, and imports from all countries have been increasing. However, U.S. imports from China have been growing at a much faster rate. The expiration of textile and apparel quotas on January 1, 2005, led to U.S. industry concerns that Chinese imports will capture the domestic market share in many product categories. Many developing nations that received access to U.S. and other developed country markets through the quota regime are also concerned that the end of quotas will lead to a global consolidation of textile and apparel production in which only a few nations, including China, India, and Pakistan, will benefit. In contrast, retailers and other importers of textiles and apparel have long opposed quotas because they believe that they cause market inefficiencies that result in higher prices to U.S. consumers than would otherwise be the case.

A textile-specific safeguard measure in China's World Trade Organization (WTO) accession agreement allows the United States and other Member countries to impose import quotas on textile and apparel imports from China if they determine that Chinese-origin imports of the targeted products are causing "market disruption." Between December 2003 and late October 2005, the Committee for the Implementation of Textile Agreements (CITA) formally requested consultations with China — and simultaneously implemented quotas — on cotton knit shirts and blouses (Multi-Fiber Arrangement (MFA) categories 338/338); cotton trousers (categories 347/348); cotton and man-made fiber underwear (categories 352/652); cotton yarn (category 301); men's and boys cotton and man-made fiber shirts, not knit (categories 340/640); man-made fiber knit shirts and blouses (categories 638/639); and man-made fiber trousers (category 647/648). U.S. producers vowed to continue filing safeguard petitions with the hope of pushing forward a more comprehensive agreement establishing quantitative limits on Chinese imports.

On November 8, 2005, then-U.S. Trade Representative (USTR) Rob Portman and Chinese Commerce Minister Bo Xilai announced that the United States and China have signed a three-year pact limiting China's exports of 34 textile and apparel products until 2008. The agreement was very similar to a June 10, 2005 agreement the European Union reached with China. U.S. producers expressed satisfaction over the measure, while U.S. importers and retailers, were displeased over the limits that the agreement imposed.

Some domestic producers are currently expressing concern that Chinese producers are currently shipping textile and apparel goods to a second country, such as Indonesia, en-route to the United States (transshipment) for the purpose of circumventing the limits set forth in the U.S.-China agreement. This report will be updated as events warrant.

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Safeguards on Textile and Apparel Imports from China

Introduction

Many U.S. producers of textiles and apparel have long anticipated a surge of Chinese imports following the expiration of all quotas on textile and apparel products on January 1, 2005. As a result, the U.S. domestic industry filed petitions, and received temporary relief, under a textile-specific safeguard measure included in China's World Trade Organization (WTO) accession agreement. The provision allows the United States and other Member countries to impose "safeguard" import quotas on textile and apparel imports from China if they determine that Chinese-origin imports of the targeted products are causing "market disruption." In contrast, retailers and other U.S. importers of textiles and apparel opposed any attempt to continue shielding an industry that they say has enjoyed "an extraordinary level of protection against foreign imports compared to any other industry."¹

On November 8, 2005, a comprehensive agreement was reached between the United States and China to establish import quotas in 34 textile and apparel product categories for a three-year period. A similar agreement was reached between the European Union and China on June 10, 2005.

While implementing the agreement with China or applying China-specific safeguards on these products does not require direct legislative action, the decision is important to many in Congress because these actions may affect textile plants, workers, retailers, and consumers in their districts. Moreover, these actions have implications for overall U.S.-China commercial relations, as well as for U.S. trade relations with other WTO Members.

Regulation of Textile and Apparel Imports

U.S. authority for regulating textile and apparel imports is provided for in section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. § 1854). The statute gives authority to the President to negotiate with representatives of foreign governments in order to obtain agreements limiting imports and to regulate the imports of textiles and agricultural products into the United States. In Executive Order 11651, as amended (37 F.R. 4699), the President delegated the supervision of the implementation of all textile and apparel trade agreements to the Committee for

¹ Autor, Erik O. "Clothing Optional — What's All the Buzz About Textiles in 2005?" Remarks at panel discussion at the Washington International Trade Association, July 22, 2004.

the Implementation of Textile Agreements (CITA), consisting of representatives from the Departments of State, the Treasury, Commerce, and Labor, and the United States Trade Representative or his designee. The representative from Commerce is the chairman of the committee, which is located for administrative purposes in the Department of Commerce. CITA is authorized by the President to “take appropriate actions concerning textiles and textile products ... and with respect to any other matter affecting textile trade policy.” Thus, CITA has broad authority to impose quotas, implement safeguards, and request consultations with other nations when it determines that imports are causing serious damage to domestic industry.

Uruguay Round Textile Commitments

As part of the Uruguay Round of trade negotiations, the United States and other WTO Member countries adopted the Agreement on Textiles and Clothing (ATC). In the ATC, the United States and others agreed to integrate the textile and clothing sectors into the General Agreement on Tariffs and Trade (GATT) by gradually phasing out import quotas in four stages over a ten-year period until eventual elimination of all quotas on January 1, 2005. The ATC also contained a safeguard mechanism permitting countries to establish transition-period quotas on articles not yet integrated, if necessary, to protect domestic markets; required Members to reduce other trade barriers to textiles and apparel in their home markets; and allowed countries to take action against circumvention of quotas.

When China became a WTO Member in December 2001, it also agreed to the provisions of the ATC thus becoming subject to its benefits and obligations. The U.S. and China had also reached a bilateral agreement in November 1999 covering a wide range of trade issues. This agreement incorporated a previously negotiated textile and apparel agreement (adopted in 1997) which provided that upon accession to the WTO, China would “catch up” to the schedule of quota phase-outs by the end of 2004. Thus, inasmuch as China joined the WTO in December 2001, quotas on textile and apparel goods from China have been phased out in three years, whereas other WTO Members’ quotas began to be phased out in 1995.²

China-Specific Textile and Apparel Safeguard

The safeguard measure used to limit Chinese textile and apparel imports is different from the more commonly known “Section 201” (or Section 421 for other Chinese imports generally) safeguard measure most recently used to provide relief to the steel industry from surges of steel imports. Section 201 of the Trade Act of 1974, as amended (19 U.S.C. §§ 2251-2254), grants relief for U.S. industries that are seriously injured or threatened with serious injury by import surges from any country. Section 421 provides similar relief for import surges caused by goods originating in China. In each of these statutes, safeguard action requires (1) an injury finding and recommendation of remedy by the U.S. International Trade Commission, and (2) Presidential action.

² CRS Report RS20889, *Textile and Apparel Quota Phaseout: Some Economic Implications*, by (name redacted).

In the case of textiles and apparel, a China-specific safeguard provision in China's WTO accession agreement allows the United States and other WTO member countries to impose temporary quotas on products from the People's Republic of China if they determine that Chinese-origin imports of the targeted merchandise are causing "market disruption." Under safeguard quotas, China is required to hold its shipments of the goods in question to a level no greater than 7.5% (6% for wool categories) more than the quantity entered during the previous year. The quotas may continue for a maximum of a year unless reapplied for, or unless an agreement is reached between the parties. While the quotas are in force, the country concerned and China is expected to continue in consultations in order to negotiate a mutually satisfactory solution.³ According to the agreement, the safeguard provision expires December 31, 2008.

CITA set forth its procedures for considering safeguard requests in the Federal Register on May 19, 2003.⁴ According to CITA, petitions may be filed by a trade association, firm, certified or recognized union, or group of workers that are representative of (A) a domestic producer or producers of a like or directly competitive product with the targeted Chinese textile or apparel product; or (B) a domestic producer of a component included in the targeted product. Petitions must contain (1) a product description; (2) import data showing the present share of the U.S. market for the product accounted for by imports from China is "increasing rapidly in absolute terms"; (3) U.S. production data illustrative of "the nature and extent of market disruption"; (4) market share data on product imports from China and the similar domestic product as a percentage of the U.S. market; and (5) a description of how the Chinese imports have adversely affected the domestic industry.⁵

After receiving a petition, CITA has 15 working days to determine whether the request provides all the necessary information. If CITA finds that the petition contains sufficient information in order to reach a determination, CITA will publish a notice in the Federal Register seeking public comments, including the text of the petition itself and a date by which comments must be received (usually 30 calendar days from the date of publication). CITA will generally make a determination within 60 calendar days of the close of the comment period. If it is unable to make a determination in that time frame, it will publish in the Federal Register a date by which it will make a determination.⁶

CITA's will also publish its final determination in the Federal Register. If the determination is affirmative, CITA will request consultations with China, and will hold consultations within 30 days. Immediately after the Chinese government receives the request for consultations, CITA will implement quantitative limits on the subject merchandise. If a mutually satisfactory solution is not reached, quotas

³ *Report of the Working Party on the Accession of China*. World Trade Organization, WT/ACC/CHN/49, Paragraph 242.

⁴ 68 F.R. 27787.

⁵ 68 F.R. 27787.

⁶ *Ibid.*

will continue in force for a maximum of one year unless industry representatives reapply for safeguards. According to CITA procedures, reapplication after the maximum time period has expired requires a new affirmative determination of market disruption.⁷

Continuing Controversy

The textile and apparel industry, arguably one of the most historically protected domestic industries, has lobbied heavily for relief from fast-growing imports from China, alleging that the imports have contributed to substantial job losses and plant closings, and threaten to cause further industry losses. Industry representatives have pledged to continue filing safeguard petitions until a broader bilateral agreement is reached with China that will cover all categories of textile and apparel imports. A more comprehensive agreement is favored because industry representatives believe that it may provide relief before the industry suffers the job losses and declines required to trigger the implementation of safeguard measures.⁸

U.S. retailers and other textile and apparel importers are opposed to any implementation of safeguards because they believe the industry has already been given substantial protection over the last fifty years. They point out that many of the jobs lost in U.S. textile and apparel manufacturing can be attributed to improvements in technology and productivity rather than from increased imports from China or other countries, and that any implementation of safeguards would allow the U.S. industry to continue to remain uncompetitive in the international marketplace.⁹ In addition, they argue that even in the absence of quotas, a high tariff wall will remain in place on many textile and apparel products relative to tariffs on many other U.S. imports. Retailers especially oppose any implementation of safeguards based on the threat of market disruption, or any extensions of safeguards beyond the time period originally authorized.¹⁰ Additionally, some retail industry supporters believe that if quotas are imposed on Chinese goods, retailers are more likely to divert orders to other lower-wage countries such as India and Pakistan rather than buying U.S. goods.¹¹

⁷ Ibid.

⁸ Comments of Augustine Tantillo, Washington Coordinator, American Manufacturing Trade Action Coalition, at a meeting of the Washington International Trade Association (WITA), July 22, 2004.

⁹ Comments of Erik Autor, International Trade Counsel, National Retail Federation, at a meeting of the WITA, July 22, 2004.

¹⁰ "Bush Administration to Restrain Textile and Apparel Import from China." *BNA International Trade Reporter*, November 20, 2003; "Industry Hopes CITA Ruling on China Textiles Leads to Broader Deal on Imports," *China Trade Extra*, November 19, 2003.

¹¹ Magnusson, Paul. "There's No Holding Back China's Textile Tide," *Business Week*, May 9, 2005.

U.S. Import Statistics

In terms of value, total U.S. imports of textiles and apparel from the world increased 38% between 1998 and 2004, from \$60.4 billion in 1998 to \$83.3 billion in 2004. In terms of volume, U.S. imports from the world increased 81% (25.9 billion square meter equivalents or SME in 1998 compared with 46.9 billion in 2003). The value of U.S. imports of textiles and apparel from China increased 147% between 1998 and 2004, from \$5.9 billion in 1998 to \$14.6 billion in 2004, while the volume of Chinese imports grew more than 500% during the same time period, from 1.9 billion SME in 1998 to 11.7 billion in 2004.

Lower growth rate in terms of value, compared with higher growth rates in terms of volume, may be accounted for by (1) reduced prices for textile and apparel imports over the time period, (2) declines in Asian currencies vs. the U.S. dollar, and (3) possible changes in the product mix of imports.

Concerns of Other Countries

Domestic textile and apparel industries in other developed and developing countries are also concerned about increased textile and apparel imports from China. For example, on January 9, 2005, Turkey implemented quotas under the safeguard on 43 categories of textile and apparel imports from China.

Most industry experts believe that the expiration of quotas will lead to several countries — particularly China, India, Pakistan, and Turkey — being major beneficiaries at the expense of other developing countries. Many developing nations, such as Indonesia, Sri Lanka, and Thailand, have invested heavily in the textile and apparel industry sectors due to access that the quota regime provided to developed country markets, and are now concerned that they are losing considerable international market share to China.¹²

A U.S. International Trade Commission (ITC) study forecasted, for example, that apparel exports from Indonesia, the Philippines, and Thailand are likely to decline, as has already occurred in apparel categories for which quotas were already eliminated. Many African nations may also lose U.S. market share, even though preferences under the African Growth and Opportunity Act (AGOA) may provide an incentive for some U.S. retailers to source products from the region in order to avoid high U.S. duty rates for products originating in other countries.¹³

Concerns over China's forecasted increase in global market share led to several calls for ameliorative action. On March 3, 2004, a group of textile industry

¹² For a more complete discussion of economic issues in the post-quota environment, see CRS Report RS20889, *Textile and Apparel Quota Phaseout: Some Economic Implications*, by (name redacted).

¹³ *Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market*, U.S. International Trade Commission (ITC). Investigation No. 332-448, Publication 3671, January 2004, pp. xiv-xx. (Hereafter cited as ITC, *Textiles and Apparel Study*.)

associations from Turkey and the United States formulated the so-called Istanbul Declaration calling for an emergency meeting of the WTO to review the possibility of a three-year extension of the quota phase-out due to the threat of increased Chinese textile and apparel imports.¹⁴ The declaration was joined by a coalition of textile manufacturing associations representing 47 countries on June 17, 2004, at a meeting in Brussels, Belgium. However, many at the meeting acknowledged that it was unlikely that WTO Members would agree to suspend quotas before the end of the year.¹⁵ On July 20, 2004, the government of Mauritius became the first country to formally request an emergency WTO meeting, but did not propose an extension of the quota system beyond December 31, 2004.¹⁶ At an October 1, 2004 meeting of the WTO Council for Trade in Goods, several developing countries — Bangladesh, the Dominican Republic, Fiji, Madagascar, Sri Lanka, Uganda, Jamaica, Nepal, and Mongolia — joined Mauritius in a proposal calling the WTO secretariat to prepare a study on adjustment-related issues and costs arising from quota elimination and to establish a WTO work program to discuss solutions for the problems identified in the study. Further efforts to establish a work program addressing their concerns were deadlocked at an informal meeting of the Council on October 26, 2004, primarily due to efforts by China, India, and Brazil — all countries that stand to benefit from the elimination of textile quotas — but talks are continuing.¹⁷

To the extent that the U.S.-China bilateral agreement limits the growth of Chinese textile and apparel imports for a three-year time period, developing countries' share of the U.S. market will probably not erode as rapidly as had been predicted. Thus, the agreement will also provide these countries with additional time to successfully adjust to market pressures.

Legislation

Some of the countries that are expected to be adversely affected by the removal of textile and apparel quotas, including Indonesia, Thailand, and Sri Lanka, were also the countries most impacted by the tsunami in South Asia on December 26, 2004. Thailand and Sri Lanka, in particular, actively lobbied for trade relief following the disaster. **S. 191** (Smith), the "TRADE Act of 2005" introduced January 25, 2005, seeks to provide limited duty-free access to textile and apparel exports from least-developed countries, including Sri Lanka, Bangladesh, the Maldives, and twelve

¹⁴ *Istanbul Declaration Regarding Fair Trade in Textiles and Clothing*, Global Alliance for Fair Textile Trade, [<http://www.fairtextiletrade.org/istanbul/declaration.html>].

¹⁵ "International Textiles Coalition Calls for Emergency WTO Meet." *Bridges Weekly Trade News Digest*, International Center for Trade and Sustainable Development, June 23, 2004, [<http://www.ictsd.org/>]; "Textile Makers Shift Focus from Textile Extension to Quota Safeguard," *Inside U.S. Trade*, China Update, July 23, 2004, [<http://www.insidetrade.com/>].

¹⁶ "Mauritius Makes First Attempt to Discuss Textile Quota Phase Out in WTO," *Inside U.S. Trade*, China Update July 23, 2004, [<http://www.insidetrade.com/>].

¹⁷ "WTO Members Deadlock on How to Address End of Textile Quotas, Pan Turkey's Proposal," *BNA International Trade Reporter*, October 28, 2004, p. 1747; "China Fails in Bid to End WTO Talks on Textile Agreement, Adjustment Issues" *BNA Daily Report for Executives*, November 29, 2004.

other countries not affected by the tsunami. The bill would provide relief similar to that granted to sub-Saharan African countries by the African Growth and Opportunity Act. Initially seen as more of an effort to help countries that depend on apparel and textile trade cope with increased imports from China, the bill is now being proposed, in part, as a tsunami relief bill.¹⁸ Similar legislation has also been introduced in the House (**H.R. 886**, Kolbe, introduced February 17, 2005).

Thailand, one of the countries not named in the bill, has mainly requested relief from antidumping measures currently in place, including shrimp, pineapple, and steel pipe, as opposed to increased access for textile and apparel goods.¹⁹ India and Indonesia, also not named in the bill, have made no specific requests for improved market access to date.

H.R. 3416 (Weller, introduced July 25, 2005), the “CITA Transparency Act of 2005,” seeks to prohibit CITA from invoking the foreign affairs exemption from notice-and-comment requirements of the Administrative Procedure Act with respect to any of its actions related to textile trade.

Safeguards Implemented

On July 24, 2003, CITA received petitions from the American Manufacturing Trade Action Coalition, the American Textile Manufacturers Institute, and the National Textile Association, alleging that Chinese imports of certain textile and apparel products “have threatened to impede the orderly development of trade and caused market disruption in the U.S. market” after quotas on the goods had been liberalized. Petitioners said that “the U.S. textile industry, which depends heavily on production-sharing agreements with Central America, the Caribbean, and Mexico, in addition to domestic purchasers, has seen its production of the product in question or the component drop substantially because of the Chinese surge.” On August 13, 2003, CITA requested public comments concerning the request for safeguard action on imports from China of knit fabric, brassieres and other body-supporting garments, and robes and dressing gowns.²⁰ Formal notification of the safeguards was forwarded to the Chinese government on December 24, 2003, requesting consultations and establishing 12-month import limits (effective from December 24, 2003 to December 23, 2004) on the three products.²¹

On June 28, 2004, CITA received another safeguard petition from the Domestic Manufacturers Committee of the Hosiery Association and the American Manufacturing Trade Action Coalition requesting action on cotton, wool, and man-

¹⁸ “Countries Impacted by Tsunami Push for Trade Benefits From U.S.,” *Inside Trade*, January 21, 2005.

¹⁹ *Ibid.*

²⁰ CITA requested public comment on implementation of safeguards on knit fabric (68 F.R. 49440), brassieres (68 F.R. 49448), and robes and dressing gowns (69 F.R. 49448).

²¹ 68 F.R. 74944 (knit fabric), 68 F.R. 74945 (brassieres), 68 F.R. 74947 (robes and dressing gowns). See [http://otexa.ita.doc.gov/Safeguard_intro.htm].

made fiber socks. The industry alleged that Chinese imports, which increased from less than one million dozen pair in 2001 to 22 million dozen pair in 2003, caused severe market disruption. In addition the petition stated that the increased lower-cost imports placed steep downward price pressure on U.S. sock producers, and led to declines in domestic sock production (166 million dozen pairs in 2003, down from 207 million dozen pairs in 2001) and employment (16,000 employees in 2003, down from 19,300 in 2001).²² On October 28, 2004, CITA determined to request consultations with China and implemented safeguard quotas on socks from October 29, 2004, to October 28, 2005.²³

Threat-Based Petitions

From mid-October to mid-November 2004, textile and apparel trade organizations and employee unions filed several additional safeguard petitions, including cotton knit shirts and blouses (categories 338/339); man-made fiber and cotton shirts, not knit (categories 340/640); cotton trousers (categories 347/348); man-made fiber trousers (categories 647/648); man-made fiber (MMF) knit shirts and blouses (categories 638/639); cotton and man-made fiber underwear (categories 352/652); and combed cotton yarn (category 301). Although all of the targeted goods in these petitions were still covered by quotas until January 2005, petitioners alleged that once the quotas were lifted, import surges from China were imminent and threatened the U.S. industry. CITA published notices requesting public comment on the petitions on November 3, 2004, and November 17 — a signal that CITA intended to actively consider petitions based on the threat of market disruption.²⁴ Additional “threat-based” requests were accepted by CITA in December 2004: cotton and MMF brassieres (categories 349/649); cotton and MMF dressing gowns and robes (categories 350/650); knit fabric (category 222); wool trousers (category 447); and “other” synthetic filament fabric (category 620).²⁵

CITA’s decision to consider “threat-based” petitions surprised some observers, due to previous statements to the contrary by James Leonard, chairman of CITA. Nonetheless, then-U.S. Undersecretary for of Commerce for International Trade Grant Aldonas said on September 22, 2004, that the United States would not hesitate to impose textile and apparel safeguards based *on threat of* disruption by increased imports.²⁶ It was partly due to Aldonas’ comments that textile and apparel industry officials and trade unions filed several such petitions.

²² 69 F.R. 43807.

²³ 69 F.R. 63771.

²⁴ Cotton knit shirts and blouses (69 F.R. 64912); men’s and boys’ cotton and man-made fiber shirts, not knit (69 F.R. 64913); cotton and man-made fiber underwear (69 F.R. 64914); man-made fiber knit shirts and blouses (69 F.R. 64911); man-made fiber trousers (69 F.R. 64915); cotton trousers (69 F.R. 64034); combed cotton yarn (69 F.R. 68133).

²⁵ Brassieres (69 F.R. 77998); dressing gowns and robes (69 F.R. 77232); knit fabric (69 F.R. 75516); wool trousers (69 F.R. 71781); synthetic filament fabric (69 F.R. 70667).

²⁶ “U.S. Will Proceed with Textile Safeguard Despite Chinese Complaints.” *Inside U.S. Trade*, October 1, 2004.

Domestic Judicial Challenge. On December 1, 2004, the U.S. Association of Importers of Textiles and Apparel (USA-ITA) filed a lawsuit against United States, including CITA, in the U.S. Court of International Trade challenging the legality of CITA's action and seeking an injunction prohibiting CITA from, among other things, taking action on petitions based on threat of market disruption based on increased imports of products still under quota. The USA-ITA lawsuit "contests the legality of the secret consideration and acceptance of petitions for safeguard relief based on the threat of market disruption and of petitions for safeguard relief concerning products currently under quota."²⁷ The group argued that failure to issue such an injunction would expose U.S. importers to irreparable harm due to previous decisions to source goods from China that they would be unable to import if threat-based safeguards were imposed on the products.²⁸

On December 30, 2004, the Court granted a preliminary injunction preventing CITA or any U.S. government officials from "accepting, considering, or taking any further action" on petitions "that are based on the threat of market disruption by Chinese textile or textile products," and from self-initiating consideration of whether to impose such safeguards.²⁹ The U.S. Department of Justice (DOJ) decided to appeal the motion, and on April 27, 2005, the Court of Appeals for the Federal Circuit granted the government's motion for a stay of the injunction, pending appeal.³⁰ CITA subsequently re-opened investigations on several of these cases which resulted in implementing safeguards and entering into consultations with China on several of these petitions.

As of November 2005, China-specific safeguard quotas are in place until December 31, 2005, on cotton knit shirts and blouses (category 338/339); cotton trousers (category 347/348); cotton and man-made fiber underwear (categories 352/652); cotton/MMF non-knit shirts (category 340/640); cotton and MMF brassieres (categories 349/649); synthetic filament fabric (category 620); MMF knit shirts (categories 638/639); MMF trousers (categories 647/648); and combed cotton yarn (category 301).³¹ An additional safeguard on cotton, wool, and man-made fiber socks (categories 332/432, and part of 632) which expired on October 28, 2005, was extended informally the parties were engaged in talks on a more comprehensive arrangement.

China's Responses to U.S. Safeguard Actions

Following the initial CITA implementation of safeguards on brassieres, dressing gowns, and knit fabric in late 2003, Chinese officials said "the U.S. administration's

²⁷ Complaint, *U.S. Association of Importers of Textiles and Apparel v. United States*, No. 04-00598 (Ct. Int'l Trade December 30, 2004), p. 1.

²⁸ *Ibid*, p. 1.

²⁹ *U.S. Association of Importers of Textiles & Apparel v. United States*, No. 04-00598 (Ct. Int'l Trade Dec. 30, 2004).

³⁰ *U.S. Association of Importers of Textiles & Apparel v. United States*, Ct. No. 05-1209 (Fed. Cir. April 27, 2005).

³¹ 70 F.R. 29722, 70 F.R. 30930.

decision to request negotiations regardless of China's strong opposition runs against WTO principles on free trade, transparency, and nondiscrimination."³² China's Trade Minister Bo Xilai charged the United States and the European Union with using double standards in their trade dealings, saying, "Double standards should not be adopted in international trade where you demand free trade for your own products, while restrictions are placed on the competitive products of developing countries. This kind of trade protectionism will only harm the healthy development of trade."³³ Some Chinese industry executives also disputed the allegations of market disruption by saying that firms that once disguised goods of Chinese origin as exports of Hong Kong, Macau, or Taiwan are simply reporting the real country of origin, thus causing the apparent import surges.³⁴

Following the implementation of additional safeguards in June 2005, while Chinese Vice Premier Wu Yi praised the European Union for settling its trade dispute with China, he criticized the United States for implementing quotas before talks could resolve the disagreement, saying that the move "severely harmed Chinese textile enterprises that were enjoying the benefits of globalization."³⁵

However, in a possible acknowledgment of concerns expressed by the United States and other countries, the Chinese Ministry of Commerce announced on December 15, 2004 that it would impose export taxes of 2 to 4 percent on certain textile and apparel products, in part, to encourage the "export of high value-added products and optimize the mix of Chinese textile exports."³⁶ In response to U.S. and EU pressure, China announced that it will increase export taxes by 400% on 74 categories of textiles and clothing beginning June 1, 2005. Products processed on the mainland but listed as originating in Hong Kong or Macao are exempted from these tariffs.³⁷

Reportedly, the Chinese Ministry of Commerce has also developed an "early warning system" to monitor export and import trade statistics and existing international trade conflicts so that Chinese enterprises, including textile and apparel manufacturers, will be able to monitor statistics in sensitive product areas worldwide. Chinese businesses have been encouraged to remain aware of policy changes in their

³² Comments on Request for Safeguard Action on Imports from China of Cotton Trousers, People's Republic of China. Submission to CITA, December 1, 2004.

³³ "China Trade Minister Accuses U.S., Europe of 'Double Standards' on Textiles, Xinhua Financial Network, May 9, 2005.

³⁴ Toh Han Shih, "Surge in China Textile Exports Alarms Key Trading Partners," *South China Morning Post*, March 9, 2005.

³⁵ "Chinese Vice Premier Criticizes U.S. Restrictions on Chinese Textile Imports," *Textile World*, June 16, 2005.

³⁶ "Taking the Positive Measure to Promote Textile Export of Our Country to Realize Sustainable Development." Chinese Ministry of Commerce (MOFCOM) Press Release, December 15, 2004.

³⁷ "Export Tariffs for Some Textile Products Exempted," *Xinhua News Agency*, May 25, 2005.

target markets in order to overcome potential technical barriers to exports, and to be more active in trade dispute investigations if they arise.³⁸

U.S.-China Memorandum of Understanding

After months of negotiations, a comprehensive agreement limiting Chinese imports of 34 textile and apparel products was reached by the United States and China in early November 2005.³⁹

In principle, the agreement covered by the memorandum of understanding (MOU) is similar to a June 10, 2005 agreement the European Union and China reached when China agreed to limit import growth in 10 categories of concern to EU producers: pullovers, blouses, men's trousers, T-shirts, dresses, brassieres, flax yarn, cotton fabrics, bed linen, table linen, and kitchen linen. The EU-China agreement limits growth in these categories will be limited to between 8% and 12.5% per year until 2008.⁴⁰

In the November 8 agreement (which entered into force January 1, 2006), the United States and China agreed to a three-year arrangement limiting Chinese imports of 34 categories of textile and apparel products, covering most — but not all — textile and apparel categories (see **Table 1**). Although the growth rates in the quota limits vary from category to category, in general, the growth rates for apparel categories are set at 10% for 2006, 12.5% for 2007, and 15% in 2008. For textile categories, the agreement limits import growth to 12.5% in 2006 and 2007, and 15% in 2008. These growth levels, although they may appear substantial, are far less than import growth rates in 2005, when Chinese imports surged by more than 1,000% in some categories covered in the agreement (see **Table 2**).

Also as part of the agreement, the United States agreed to allow entry of Chinese products, with the exception of socks, that were previously denied entry (e.g. already held in bonded warehouses) due to the implementation of safeguards in 2005, and further agreed that these products would not be charged against the annual levels specified in the agreement.⁴¹

The parties also agreed to cooperate in enforcing the levels and preventing circumvention by transshipment, falsification of official documents, and any other

³⁸ "China Develops Warning System to Monitor Trade Changes." *Asia Pulse*, March 10, 2005.

³⁹ "US, China Sign Textile Pact," *Washington Trade Daily*, November 9, 2005.

⁴⁰ European Commission. "EU - China Textile Agreement 10 June 2008," Press Release, MEMO/01/201, June 10, 2005.

⁴¹ *Memorandum of Understanding Between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products*, signed November 8, 2005. (Hereafter cited as U.S.-China MOU).

means. To this end, they agreed to implement an Electronic Visa Information System (ELVIS).⁴²

The United States and China also pledged to work together to create a “stable environment for bilateral trade in all textile and apparel products.” Therefore, the United States agreed not to implement any China-specific safeguards on any textile or apparel product integrated into the GATT before January 1, 2002, on any textile or apparel product covered in the agreement, and to exercise restraint in implementing safeguards on any products not covered by agreed-upon levels.⁴³

As a result of the agreement, the CITA announced on November 23, 2005 that it was terminating the further consideration of all pending requests for safeguards on imports from China.⁴⁴

Allegations of Illegal Transshipment

Some U.S. producers have accused Chinese manufacturers of illegal transshipment of textile and apparel products — particularly through Indonesia or through certain African countries that receive preferential treatment under the African Growth and Opportunity Act (AGOA).

Transshipment is the movement of goods through a second country en route to the United States or another receiving country. Although the practice is generally legal and commonly used in the ordinary course of business, it is illegal if it is done for the purpose of circumventing trade laws and other applicable trade restrictions.⁴⁵ Illegal transshipment can (1) adversely affect domestic producers; (2) create an unfair competitive advantage for the violator; (3) restrict the trade of legitimate manufacturers if quotas are imposed on the merchandise; (4) undermine bilateral textile agreements and other trade initiatives that confer preferential treatment; and (5) confer false information regarding country of origin to the consumer.⁴⁶

Many different schemes are used to evade duties or quotas on textiles being brought into the United States. For example, some importers or manufacturers may forge the country of origin documents of their goods through the process of transshipment. Others may use false documents or labels or provide incorrect descriptions of the merchandise.⁴⁷

⁴² Ibid., Appendix III.

⁴³ Ibid, p. 4.

⁴⁴ 70 F.R. 71472.

⁴⁵ *Transshipment: Technical Information for Pre-Assessment Surveys*, Customs and Border Protection, October 2003.

⁴⁶ Ibid.

⁴⁷ “U.S. Customs and Border Protection has Seized \$10 Million in Misdemeanor Textile Product Since October,” Customs and Border Protection News Release, June 27, 2006.

Most textile and apparel commodities being transshipped through Indonesia would receive no preferential tariff treatment. Even though many products imported from Indonesia do enjoy duty-free treatment under the Generalized System of Preferences (GSP), most textiles and apparel commodities are considered “import sensitive” and thus are specifically excluded from receiving preferential treatment under GSP.⁴⁸ Therefore, if Chinese producers are transshipping merchandise through Indonesia or other GSP countries, it is most likely in order to avoid the quantitative restrictions imposed by the U.S.-China MOU. However, if goods from China are being transshipped to the United States through an African country that receives benefits under AGOA, they could enter at reduced duty rates under the AGOA preference as well as circumvent the quotas.

U.S. Customs and Border Protection (CBP) has identified stopping illegal transshipments as a Priority Trade Issue (PTI), and is attempting to combat the practice, in part, by sending Textile Production Verification Teams to inspect foreign factories. In November 2005, teams were sent to review 195 “high risk” facilities that were selected through extensive analysis of trade patterns and verification documents. Of these factories, 70 turned out to be closed, 24 denied the team admission, 50 were considered high potential for transshipments, and three had evidence that they were engaging in illegal transshipments. Verifications are ongoing and visits to additional locations are being planned.⁴⁹ CBP also announced that over a four-month period ending in late June 2006, it had seized more than \$10 million in “misdescribed” textile products.⁵⁰ This probably amounts to only a small percentage of the illegally transshipped products.

In addition, the Indonesian government has delivered a formal complaint on the issue of illegal transshipment with the Chinese government, and has pledged to further discuss the issue during bilateral meetings in August 2006.⁵¹ The Indonesian interest in the problem is most likely due to bilateral talks between the United States and Indonesia in April 2006 which were characterized as laying the groundwork for a potential future free trade agreement.⁵²

Conclusion

The U.S. textile industry expressed satisfaction with the memorandum of understanding with China, saying that “today’s agreement vindicates the U.S. textile industry’s decision in 2003 to aggressively use the safeguard process to persuade all

⁴⁸ 19 U.S.C. § 2463(b)(1)(A).

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ “Indonesia, China to Discuss Transshipment Issue,” *Asia Pulse News*, June 26, 2006.

⁵² “U.S. and Indonesia Talks Prepare Groundwork for Free Trade Agreement,” *BNA International Trade Daily*, April 5, 2006.

parties of the need for a comprehensive arrangement.”⁵³ U.S. importers reiterated their opposition to any form of quotas but acknowledged that the agreement provided much more predictability than the disruptive safeguard regime.⁵⁴

After the agreement was signed, Trade Minister Bo Xilai said, “The results of the negotiations actually have provided a stable environment for the industries both in China and the United States and in this sense there is a win-win result.”⁵⁵ He also maintained, however, that the “textile industry actually directly employs 1.9 million [low-income] people in China and therefore is a highly sensitive industry in China,” and therefore, that “the Chinese government always believes that it is entitled to the rights and interests provided by the textile integration which started on January 1st, 2005.”⁵⁶ Then-USTR Portman said, “We sought an agreement that achieves the stability and predictability sought by our retailers and textile producers who understandably found it hard to plan in the face of unpredictable safeguards. This agreement is a good example of where, through hard work and faith, constructive solutions can be found to difficult trade issues.”⁵⁷

Now that the United States and Chinese trade officials have successfully reached a comprehensive agreement, officials expressed hope and optimism that future trade shocks in the textile and apparel sector can be avoided.

⁵³ “Comprehensive Deal Reached to Limit U.S. Imports of Chinese Textiles and Clothing,” American Manufacturing Trade Action Coalition (AMTAC) press release, November 8, 2005. See [<http://www.amtacdc.org>].

⁵⁴ “AAFA Says New China Trade Agreement is an Improvement; Urges Safeguards Termination,” America Apparel and Footwear Association, press release, November 8, 2005. See [<http://www.apparelandfootwear.org>].

⁵⁵ “U.S., China Sign Comprehensive Bilateral Textile Agreement,” U.S. Department of State, States News Service, November 8, 2005.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

Table 1. Agreed Levels of Textile and Apparel Products in U.S./Chinese Memorandum of Understanding

Category	Unit	2006 Level	2007 Level	2008 Level
200/301: sewing thread/ combed cotton yarn	kg	7,529,582	8,659,019	10,131,052
222 : knit fabric	kg	15,966,487	18,361,460	21,482,908
229: special purpose fabric	kg	33,162,019	38,467,942	45,007,492
332/432/632 pt: socks (including baby socks)	dp	64,386,841	73,963,859	85,058,437
sublimit 332/432/632 pt: socks (including baby socks)	dp	61,146,461	70,318,431	80,866,195
338/339 pt: cotton knit shirts	dz	20,822,111	23,424,875	29,938,606
340/640: men's and boy's woven shirts	dz	6,743,644	7,586,600	8,724,590
345/645/646: sweaters	dz	8,179,211	9,201,612	10,673,870
347/348: cotton trousers	dz	19,666,049	22,124,305	25,442,951
349/649: bras	dz	22,785,906	25,634,144	29,479,266
352/652: underwear	dz	18,948,937	21,317,554	24,515,187
359S/659S: swimwear	kg	4,590,626	5,164,454	5,990,767
363: pile towels	no	103,316,873	116,231,482	134,828,519
666pt: window shades	kg	964,014	1,084,516	1,268,884
443: men's and boy's wool suits	no	1,346,082	1,514,342	1,756,637
447: men's and boy's wool trousers	dz	215,004	241,880	280,581
619: polyester filament	m ²	55,308,506	62,222,069	72,177,600
620: other synthetic filaments	m ²	80,197,248	90,221,904	103,755,190
622: glass fabric	m ²	32,265,013	37,104,765	43,412,575
638/639 pt: MMF knit shirts	dz	8,060,063	9,067,571	10,427,707
647/648 pt: MMF trousers	dz	7,960,355	8,955,399	10,298,709
847: svbf trousers	dz	17,647,255	19,853,162	23,029,668

Source: *Memorandum of Understanding Between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products*, signed November 8, 2005.

Table 2. U.S. Imports of Textiles and Apparel from China: Selected Categories by Volume, Year-To-Date April 2006 and April 2005 and Cumulative (12-Month) Data

Category	Description	CITA Status	Year-to-Date (YTD) data			Cumulative (12-month) data			
			YTD April 2005	YTD April 2006	%Change YTD April 05 - YTD April 06	Cumulative 12-month data from March 2004 - April 2005	Cumulative 12-month data from March 2005 - April 2006	% Change cumulative 12-month data	Chinese % of U.S. Market Share (cumulative) Mar. 05 - Apr. 06
222	Knit Fabric (data in million square meters)	Safeguard quota in effect from 12/24/2003 to 12/23/2004. Safeguard re-applied for in 2005 — CITA consideration terminated Nov. 23, 2005. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	44.7	60.9	36%	126.7	239.1	89%	14%
226	Cheesecloth, Batistes, Lawns/Voile (million square meters)	CITA agreed to consider safeguard request Oct. 11, 2005. Consideration terminated Nov. 23, 2005.	11.9	5.6	-53%	19.9	24.6	23%	45%
301	Combed Cotton Yarn (million square meters)	Quota in effect 05/27/05 - 12/31/05. CITA agreed to consider re-application 10/11/2005 — CITA consideration terminated Nov. 23, 2005. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	7.3	3.9	-46%	20.3	18.2	-10%	3%

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Category	Description	CITA Status	Year-to-Date (YTD) data			Cumulative (12-month) data			
			YTD April 2005	YTD April 2006	%Change YTD April 05 - YTD April 06	Cumulative 12-month data from March 2004 - April 2005	Cumulative 12-month data from March 2005 - April 2006	% Change cumulative 12-month data	Chinese % of U.S. Market Share (cumulative) Mar. 05 - Apr. 06
338/339	Cotton Knit Shirts, Blouses (million dozen)	Quotas in effect 05/23/05 - 12/31/05. CITA agreed to consider re-application 10/11/2005 — CITA consideration terminated Nov. 23, 2005. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	9.7	2.3	-76%	11.8	13.2	12%	4%
340/640	Cotton/MMF Non-Knit Shirts (million dozen)	Quotas in effect 05/27/05 - 12/31/05. CITA agreed to consider re-application 10/11/2005 — CITA consideration terminated Nov. 23, 2005. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	2.6	0.9	-64%	4.3	4.5	4%	10%
341/641	Non-Knit Blouses (million dozen)	CITA review period extended until Nov. 8, 2005. CITA consideration terminated Nov. 23, 2005.	2.7	39.9	43%	4.4	10.8	147%	26%
342/642	Skirts (million dozen)	CITA review period extended until Nov. 8, 2005. CITA consideration terminated Nov. 23, 2005.	2.4	3.8	60%	2.9%	9.0	213%	33%

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Category	Description	CITA Status	Year-to-Date (YTD) data			Cumulative (12-month) data			
			YTD April 2005	YTD April 2006	%Change YTD April 05 - YTD April 06	Cumulative 12- month data from March 2004 - April 2005	Cumulative 12-month data from March 2005 - April 2006	% Change cumulative 12-month data	Chinese % of U.S. Market Share (cumulative) Mar. 05 - Apr. 06
347/348	Cotton Trousers, Slacks (million dozen)	Safeguard quotas in effect 05/27/05 - 12/31/05.CITA agreed to consider re- application 10/11/2005. CITA consideration terminated Nov. 23, 2005. Included in U.S.- China three-year agreement limiting Chinese imports through 2008.	9.2	2.6	-72%	10.8	11.8	9.4%	7%
345	Cotton sweaters (million dozen)	CITA determination extended to Nov. 30, 2005, but subsequently terminated Nov. 23, 2005. Included in U.S.- China three-year agreement limiting Chinese imports through 2008.	6.5	4.1	-36%	10.0	67.2	567%	27%
349/649	Brassieres (million dozen)	Quotas in effect 8/31/05 - 12/31/05.CITA agreed to consider re-application 10/11/2005, but subsequently terminated consideration Nov. 23, 2005. Included in U.S.- China three-year agreement limiting Chinese imports through 2008.	7.2	4.6	-37%	19.7	18.0	-19%	38%

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Category	Description	CITA Status	Year-to-Date (YTD) data			Cumulative (12-month) data			
			YTD April 2005	YTD April 2006	%Change YTD April 05 - YTD April 06	Cumulative 12-month data from March 2004 - April 2005	Cumulative 12-month data from March 2005 - April 2006	% Change cumulative 12-month data	Chinese % of U.S. Market Share (cumulative) Mar. 05 - Apr. 06
350/650	Dressing Gowns and Robes (million dozen)	Quota in effect from 12/24/2003 to 12/23/2004. CITA determination on new application extended to Nov. 30, 2005, but consideration subsequently terminated Nov. 23, 2005.	14.8	11.6	-22%	4.8	4.9	1%	42%
351/651	Cotton, MMF Nightwear (million dozen)	CITA review period extended through Dec. 31, 2005, but consideration subsequently terminated Nov. 23, 2005.	2.3	2.6	14%	3.6	11.5	217%	35%
359S/659S	Swimwear (million kilograms)	CITA review period extended through Nov. 8, 2005. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	2.8	2.5	-10%	3.2	5.7	77%	22%
352/652	Cotton, MMF Underwear (million dozen)	Quotas in effect 05/23/05 - 12/31/05. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	7.3	1.7	-77%	10.9	12.4	14%	5%

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Category	Description	CITA Status	Year-to-Date (YTD) data			Cumulative (12-month) data			
			YTD April 2005	YTD April 2006	%Change YTD April 05 - YTD April 06	Cumulative 12- month data from March 2004 - April 2005	Cumulative 12-month data from March 2005 - April 2006	% Change cumulative 12-month data	Chinese % of U.S. Market Share (cumulative) Mar. 05 - Apr. 06
443	Men's and boy's wool suits (million dozen)	CITA agreed to consider safeguard action, Oct. 11, 2005, but consideration subsequently terminated Nov. 23, 2005. Included in U.S.- China three-year agreement limiting Chinese imports through 2008.	1.7	2.2	33%	2.0	6.6	224%	23%
447	Wool Trousers (million square meters)	CITA review period extended through Nov. 30, 2005, but consideration subsequently terminated Nov. 23, 2005. Included in U.S.-China three- year agreement limiting Chinese imports through 2008.	1.1	0.7	-37%	1.7	2.6	52%	12%
619	Polyester Filament Fabric, lightweight (million square meters)	CITA agreed to consider safeguard action, Oct. 11, 2005, but consideration subsequently terminated Nov. 23, 2005. Included in U.S.- China three-year agreement limiting Chinese imports through 2008.	15.0	9.8	-35%	17.0	55.2	224%	18%

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Category	Description	CITA Status	Year-to-Date (YTD) data			Cumulative (12-month) data			
			YTD April 2005	YTD April 2006	%Change YTD April 05 - YTD April 06	Cumulative 12-month data from March 2004 - April 2005	Cumulative 12-month data from March 2005 - April 2006	% Change cumulative 12-month data	Chinese % of U.S. Market Share (cumulative) Mar. 05 - Apr. 06
620	Other Synthetic Filament Fabric (million square meters)	Quotas in effect 8/31/05-12/31/05. CITA agreed to consider re-application 10/11/2005, but consideration subsequently terminated Nov. 23, 2005. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	20.2	4.4	-78%	24.0	65.9	175%	12%
638/639	MMF Knit Shirts, Blouses (million dozen)	Quotas in effect 05/27/05 - 12/31/05. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	3.8	1.7	-56%	5.9	7.2	22%	8%
647/648	MMF Trousers, Slacks (million dozen)	Quotas in effect 05/27/05 - 12/31/05. Included in U.S.-China three-year agreement limiting Chinese imports through 2008.	3.1	1.2	-63%	5.2	5.6	8%	9%

Source: Department of Commerce, Office of Textiles and Apparel Preliminary Textile and Apparel Import Data.

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