UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMERCIAL AVAILABILITY OF APPAREL INPUTS (2003): EFFECT OF PROVIDING PREFERENTIAL TREATMENT TO APPAREL FROM SUB-SAHARAN AFRICAN, CARIBBEAN BASIN, AND ANDEAN COUNTRIES

Investigation No. 332-450-001

April 2003

Commercial Availability of Apparel Inputs (2003): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries

U.S. International Trade Commission Investigation No. 332-450-001

Products	**Apparel made with lastol elastic yarn**
Requesting Party	**Dow Chemical Company, Midland, MI**
Date of Commission Report: USTR **Public**	**April 4, 2003** **April 2003**
Commission Contact	**Cynthia Trainor (202-205-3354); *trainor@usitc.gov***

NOTICE
THIS REPORT IS A PUBLIC VERSION OF THE REPORT SUBMITTED TO USTR ON APRIL 4, 2003. ALL CONFIDENTIAL INFORMATION HAS BEEN REMOVED AND REPLACED WITH ASTERISKS (***).

Summary of Findings

The Commission's analysis shows that granting duty-free and quota-free treatment to U.S. imports of apparel made in eligible sub-Saharan African or Caribbean Basin countries from lastol elastic yarn, or from U.S.-formed fabrics containing such yarns, regardless of the source of the yarn, likely would have a negligible effect on U.S. producers of other elastic yarns, benefit U.S. textile mills and their workers, and have a slight adverse effect on U.S. firms making competitive garments domestically, and their workers. The proposed preferential treatment likely would benefit U.S. apparel firms making garments in the eligible countries, and their U.S.-based workers. U.S. consumers likely would benefit from some of the duty savings resulting from the proposed preferential treatment.

Background

On January 28, 2003, following receipt of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332-450, *Commercial Availability of Apparel Inputs (2003): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice during 2003 in connection with petitions filed by interested parties under the "commercial availability" provisions of 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, Division D of the Trade Act of 2002).[1]

The Commission's advice in this report concerns a petition received by the Committee for the Implementation of Textile Agreements (CITA) on February 21, 2003, alleging that lastol elastic yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim preferential treatment for apparel from such yarns, or from U.S.-formed fabrics containing such yarns, made in eligible AGOA and CBTPA beneficiary countries, regardless of the source of the yarns. The President is required to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance that sets forth the action proposed to be implemented, the

[1] For more information on the investigation, see the Commission's notice of investigation published in the *Federal Register* of February 4, 2003 (68 F.R. 5651) and its website at *www.usitc.gov/332s/shortsup/shortsupintro.htm*.

reasons for such action, and the advice obtained from the Commission and the appropriate advisory committee within 60 days after a request is received from an interested party.[2]

Brief discussion of the product

The elastic yarn named in the petition is a synthetic monofilament that is classified in the Harmonized Tariff Schedule of the United States (HTS) as a synthetic elastomeric yarn under subheadings 5404.10.80 and 5402.49.90 and statistical reporting numbers 5404.10.8005 (less than 67 decitex) and subheading 5402.49.9005 (67 decitex or more). According to the petitioner, Dow Chemical Co., the imported elastic yarn would undergo a process in the United States known as "core spinning," in which the core yarn (the elastic yarn) is wrapped with a sheath of cotton fibers during the spinning process, thus concealing the core yarn, to form a core-spun cotton yarn. When this yarn is processed into fabric, the finished fabric has the stretch of the core elastic yarn and the "hand" or feel of cotton. Apparel articles made from the subject yarns, or from fabrics made in the United States from such yarns, would include a wide range of garments such as uniform shirts and pants, classifiable in HTS chapter 61 (apparel, knitted or crocheted) and chapter 62 (apparel, not knitted or crocheted). The 2003 column 1-general rates of duty on woven cotton shirts and pants range from 15.5 percent to 19.8 percent ad valorem.

Lastol is an elastic fiber with a molecular design and fiber structure founded upon metallocene-based polyolefin elastomer chemistry. The fiber is created from a synthetic polymer, with low but significant crystallinity, composed of at least 99 percent by weight of ethylene and at least one other olefin unit. Among the properties of the fiber are heat resistance to temperatures up to and greater than 220 degrees Celsius and chemical resistance to stringent textile-processing chemicals such as potassium permanganate and hypochlorite. The core-spun yarns containing lastol can be dyed without special handling. According to Dow Chemical, fabrics made from the subject yarns can be piece-dyed using a broad range of chemicals and temperatures not typically used for fabrics of other elastic yarns, and they can be thermosol dyed in deep, rich colors without degradation of the elastic properties. Dow Chemical noted that fabrics made from the subject yarns can accept application of performance finishes (e.g., stain-release and anti-wrinkle) without degradation of stretch performance. Dow Chemical also said that apparel made from the subject yarns exhibits "comfort stretch" or ease, even in highly bleached denim, and can be repeatedly washed, bleached, tumbled dry, and dry-cleaned without degradation or loss of stretch performance.

The technology to produce lastol is proprietary to Dow Chemical,[3] which asserts that comparable fibers are not made in the United States. Dow indicates that two critical steps in the production of lastol – melt spinning and electron beam cross-linking -- cannot be performed to commercial levels on equipment available in the United States.[4] ***.[5] ***.

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[2] In Executive Order No. 13191, the President delegated to CITA the authority to determine whether particular fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. He authorized CITA and USTR to submit the required report to the Congress.

[3] U.S. Letters Patent 6,500,540 issued to the Dow Chemical Company, Midland, MI, on Dec. 31, 2002, covers technology used in the production of lastol.

[4] Lastol in fiber form undergoes high-intensity electron-beam radiation cross-linking procedures, which impart a constrained geometry to the molecular architecture of the polymer. As a result of the anthrax problems, the U.S. Government has procured all domestic electron-beam machines for the irradiation of mail and they are no longer available on a toll basis to Dow. ***. Petition received by CITA on behalf of Dow Fiber Solutions, from Sandler, Travis & Rosenberg, LLC, Washington, DC, counsel for petitioner, Feb. 21, 2003, and Dow Fiber Solutions video conference with Commission staff, Mar. 25, 2003.

[5] ***, telephone interview by Commission staff and e-mail correspondence, Mar. 26, 2003, and Dow Fiber Solutions video conference with Commission staff, Mar. 25, 2003.

***.[6]

Brief discussion of affected U.S. industries, workers, and consumers

The segments of the U.S. textile and apparel sector that may be affected by the proposed preferential treatment are manmade fiber manufacturers, textile mills (yarn spinning, fabric forming, dyeing, and finishing), and apparel producers.

Manmade fiber manufacturers

The Commission contacted Bayer Polymers, LLC, DuPont Textiles and Interiors, and RadiciSpandex, all U.S. manufacturers of manmade fibers.

Bayer Polymers, LLC, Charleston, SC, ***.[7]

DuPont Textiles & Interiors, Wilmington, DE (DuPont), ***.[8] ***.[9]

RadiciSpandex Corp., Fall River, MA, a manufacturer of spandex, ***.[10]

Textile Mills

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Apparel manufacturers

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Retailers

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[6] ***. Jean Aukerman, Dow Fiber Solutions, telephone interview by Commission staff, Mar. 26, 2003, and petition received by CITA on behalf of Dow Fiber Solutions, from Sandler, Travis & Rosenberg, LLC, Washington, DC, counsel for petitioner, Feb. 21, 2003.

[7] ***, telephone interview by Commission staff, Mar. 15, 2003.

[8] ***. Mary Vane, Director, International Trade and Business Development, DuPont Apparel & Textile Sciences, written submission to the Commission, Mar. 24, 2003.

[9] Mary Vane, Director, International Trade and Business Development, DuPont Apparel & Textile Sciences, telephone interview by Commission staff and written submission to the Commission, Mar. 24, 2003.

[10] ***, telephone interview by Commission staff, Mar. 19, 2003.

[11] ***, telephone interview by Commission staff, Mar. 24, 2003.

[12] ***, telephone interview by Commission staff, Mar. 26, 2003.

[13] ***, telephone interview by Commission staff, Mar. 25, 2003.

[14] ***, telephone interview by Commission staff, Mar. 23, 2003.

[15] ***, telephone interview by Commission staff, Mar. 26, 2003.

[16] ***, telephone interview by Commission staff, Mar. 24, 2003.

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Views of interested parties

The Commission received a written statement in support of the petition from Dan River Inc., and submissions in opposition from the American Fiber Manufacturers Association, Inc. (AFMA), Bayer Polymers LLC Americas, DuPont Textiles & Interiors, and RadiciSpandex Corp. Dan River states that "lastol fiber provides a new opportunity for U.S. textile manufacturers to produce fabrics that have stretch properties with styling and fashion characteristics that currently available elastic fibers do not permit." Dan River cites the unusual impact of terrorist activities on domestic high intensity electron beam radiation facilities required for crosslinking the fiber, as the underlying reason lastol fiber cannot be manufactured in the United States in commercial quantities in a timely manner, for the foreseeable future.[18]

In opposition to the petition, AFMA, a trade association representing U.S. producers of manufactured fibers, cited the "yarn forward rules of origin first used in the North American Free Trade Agreement (NAFTA) now govern fair and mutually beneficial U.S. textile sector trade with nearly 80 countries. AFMA contends that the subject petition does not meet the necessary criteria to qualify for this exemption." AFMA further contends that "lastol fiber's performance characteristics fall within the standard specifications for elastic fiber readily available in the U.S. market" from producers such as DuPont, RadiciSpandex, and Bayer. AFMA also states that Dow's "allegation of commercial non-availability is of its own making" from its decision to use an extraterritorial venue for startup production" and that there are "readily available U.S.-produced substitutes."[19]

Bayer states that, while lastol may differ from other elastomeric material in terms of chemical composition, it disagrees with the premise that there is insufficient supply of elastic fiber to meet domestic industry demand, and cites lack of differentiation from existing elastic fibers within the U.S. manufacturing industry which have proven themselves to meet the needs of all existing fiber knitting and finishing processes that require stretch. Bayer states ***, and that the chemical differences among lastol, spandex, rubber, and other elastomeric materials are not critical to the knitting and weaving industry and do not hinder development of stretch fabrics by the U.S. textile and apparel industries. Bayer states that spandex and natural rubber, composed of natural latex crosslinked to give retroactive power, can both be used in the same textile applications as lastol. According to Bayer, heat resistance to 220 degrees Celsius is not required for normal textile finishing operations; relevant temperatures range from 180 to 200 degrees Celsius and current elastic fibers exhibit considerable variation in heat resistance. Bayer also states that chemical resistance to stringent chemicals used in textile processing operations may be addressed through the proper choice of chemical additives to perform all normal high and low pH dyeing, chlorine bleaching, oxidative scouring, high temperature dyeing and other chemical treatments used in the textile industry.[20]

DuPont states that it opposes the petition on the basis of readily available domestically produced functional substitutes, longstanding trade policy of "yarn forward" rule of origin for textiles and apparel, and anticipated harm to the U.S. textile industry. DuPont produces elastic fibers or yarns of two generic types (spandex or elastane, as well as elasterell-p), with 10 distinct chemistries, in the United States. These fibers are considered fabric "enhancers" and are used as minority components in a fabric and garment to create the functionality of elasticity and comfort or enhanced support. The company cites lastol elasticity limitations as restrictive to end use opportunities, particularly in knit products. DuPont

[17] ***, telephone interview by Commission staff, Mar. 26, 2003.

[18] James Martin, President, Apparel Fabrics Division, Dan River Inc., written submission to the Commission, Mar. 25, 2003.

[19] Paul O'Day, President, AFMA, written submission to the Commission, Mar. 20, 2003.

[20] Neal Tonks, Vice President, Global Manufacturing & Technology, Dorlastan Spandex, Bayer Polymers, LLC, written submission to the Commission, Mar. 24, 2003.

states that to confer benefits upon foreign specialty producers undermines its significant annual investments on research in elastic fibers and yarns targeted at growing the domestic market, keeping U.S. textile mills competitive, and offering a continuous flow of innovations DuPont also states that equipment is commercially available in the United States to produce melt spun elastomeric yarns. DuPont states further concerns, citing the practice of providing new products to best customers first: if investment is in large sustainable overseas markets, that is the most likely market for new products and it will be difficult for higher cost U.S. producers to maintain a competitive position unless U.S. customers are first with new products.[21]

RadiciSpandex states that to grant a duty waiver for apparel made with lastol elastic yarn may have potential injurious impact on a viable and fundamental U.S. fiber industry component that is already under attack by import competition. The company further states that lastol fiber is not substantially different from spandex fibers and yarns that are available in more than adequate supply. RadiciSpandex opined that claims of heat resistance of lastol are far in excess of user industry requirements for such fibers, and that it has commercially available elastic yarn products in its S-45 line which exceed all commercial heat requirements for the textile industry.[22]

Probable economic effect advice[23]

The Commission's analysis shows that granting duty-free and quota-free treatment to U.S. imports of apparel made in eligible AGOA or CBTPA beneficiary countries from the subject yarn, or from U.S. fabric formed from such yarn, regardless of the source of the yarn, likely would have a negligible effect on U.S. producers of elastic yarns that may compete with the subject yarn. ***. Information available to the Commission suggests that the subject yarn differs from other domestic elastic yarns in chemical composition, properties, and yarn performance attributes.

The proposed preferential treatment would benefit U.S. textile mills that process the subject yarn into core-spun yarns and finished fabrics, and their workers, by spurring demand for U.S. fabrics for use in the production of apparel in eligible AGOA and CBTPA beneficiary countries. The expected increase in U.S. apparel imports made from the subject yarn likely would displace some imports of competitive apparel, and there could be a slight adverse effect on U.S. firms making competitive garments domestically. However, the extent to which this displacement would occur depends on the reliability of sources of supply and any perceived quality differences relative to price differences for U.S. firms using the subject yarn. Information on the quality, price, and delivery time of the imported subject fiber was not readily available.

The proposed preferential treatment likely would benefit U.S. and other apparel firms making garments in AGOA and CBTPA eligible countries with the subject yarn by increasing the supply of "eligible" fabrics and of lower priced fabrics. U.S. consumers of apparel made with the subject yarn would benefit from the proposed preferential treatment to the extent that importers pass on some of the duty savings to retail consumers in today's highly competitive market for shirts, pants, casual wear, and uniforms.

[21] Mary Vane, Director, International Trade & Business Development, DuPont Textiles & Interiors, written submission to the Commission, Mar. 24, 2003.

[22] Robert Rebello, CEO, RadiciSpandex Corp., written submission to the Commission, Mar. 21, 2003.

[23] The Commission's advice is based on information currently available to the Commission.