SMART Since 1932 SECONDARY MATERIALS® AND RECYCLED TEXTILES
The Association of Wiping Materials, Used Clothing and Fiber Industries

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VIA REGULATIONS.GOV
Office of the United States Trade Representative
Trade Policy Staff Committee
AGOA Implementation Subcommittee
600 17th Street, NW Washington, DC 20508

> RE: Out-of-cycle review of African Growth and Opportunity Act benefits for Kenya, Tanzania, Rwanda and Uganda as provided for under section 111(d)(4) of the AGOA (19 U.S.C. 2466a(d)(4)

Dear Trade Policy Staff Committee:

I am writing on behalf of the Secondary Materials and Recycled Textiles Association (SMART) to request that the Trade Policy Staff Committee (TPSC) launch an out-of-cycle review of African Growth and Opportunity Act (AGOA) beneficiary countries Kenya, Tanzania, Rwanda and Uganda as provided for under section 111(d)(4) of the AGOA (19 U.S.C. 2466a(d)(4)).

As we will expand upon below, we believe this review is warranted due to these countries' recent decision to begin phasing-in a ban on imports of secondhand clothing (Harmonized Tariff Schedule heading 6309, commonly referred to as "used clothing"), which our industry exports to the region. In their effort to phase-in this ban, these four countries also recently dramatically increased import duties on these goods, which is part of their plan to fully ban imports of used clothing by 2019.

We believe this ban and the resultant tariffs represent a clear violation of eligibility criteria set forth in Section 104 of the AGOA (19 U.S.C. 3703), specifically that the AGOA beneficiary "has established or is making continual progress toward establishing... A market based economy;" and work towards the "elimination of barriers to U.S. trade and investment." Moreover, as we will further detail, they have already imposed significant hardship on our industry, creating the "exceptional circumstances" needed to justify the extraordinary out-of-cycle review we are requesting.

Description of SMART and its Members

SMART is a non-profit trade association founded in 1932 that represents numerous small and medium-sized companies involved in using, converting and recycling pre- and post-consumer textiles and other secondary materials. The activities of this nearly $1 billion industry are very diverse.

Some SMART members recover and process "pre-consumer" by-products from the textile and fiber industries to be used in new materials for automobiles, home furnishings, and a variety of other products. Others buy and sell "post-consumer" secondhand textiles, purchasing excess textile donations collected from various charities and commercial sources (e.g. Salvation Army, Goodwill, hospitals, hotels, industrial laundries, etc.), while others collect used textiles dropped

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off by the public via clothing collection bins conveniently located throughout communities. Some of these recovered textiles become wiping and polishing cloths used in institutional and industrial settings while others are reprocessed into fibers for furniture stuffing, upholstery, insulation, building and other materials. The items that can be reused as apparel are usually exported, typically to least developed and developing countries including places like Africa, where demand for affordable, quality clothing is especially high. It should be pointed out that while the recycled fiber is a useful by-product of the clothing recycling trade, it is the resale of good, usable clothing that renders the overall industry profitable.

Through these business activities, for-profit textile recyclers create meaningful employment for tens of thousands of people who drive local economies and generate much-needed tax revenue across the United States. They also generate meaningful income for numerous well-respected charities and make vital contributions to state and national environmental goals through the recycling of nearly 4 billion pounds of used clothing and other textile waste that would have otherwise gone to a landfill each year.

Secondhand Clothing/Footwear Ban in the EAC

SMART has significant concerns about the ban on secondhand clothing and footwear imports in the East African Community nations of Kenya, Uganda, Tanzania, and Rwanda. This ban was first proposed by these four countries (along with non-AGOA beneficiary Burundi) in February 2015 during the 16th East African Community Heads of State summit, with EAC trade ministers claiming that a ban was needed to boost their domestic textile industries.[1] Given the significant toll of such a ban on our industry, SMART immediately reached out to the U.S. Department of Commerce's Office of Textile and Apparel (OTEXA) and the Office of the U.S. Trade Representative. These agencies quickly engaged, and U.S. government officials attempted multiple interventions on our industry's behalf during both in-person meetings with EAC officials and in formal written correspondence.

Unfortunately, these contacts appear to have had had little effect on EAC leaders, who subsequently announced in a March 2016 joint communiqué that they were moving ahead with the ban. In that statement, the African leaders promised to work together to develop their domestic textile and leather industries, "...with a view to phasing out importation of textile and footwear within three years...with a view to fast tracking the process."[2] Although that

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[1] Communiqué of the 16th Ordinary Summit of the East African Community Heads of State, 20 February, 2015, 6. < http://eac.int/news-and-media/statements/20150220/16th-ordinary-eac-heads-state-summit>

[2] **Joint Communiqué: 17th Ordinary Summit of the East African Community Heads of State, 2016 March,** http://www.president.go.ke/2016/03/02/17th-ordinary-summit-of-the-east-african-community-heads-of-state/

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communiqué offered no details about how this phase-in would occur, subsequent media reports confirmed the EAC trade ministers planned to implement the ban in stages, more than likely beginning with import duty increases on secondhand clothing and shoes.

Since the February 2015 announcement, it is our understanding that U.S. government officials have repeatedly raised our concerns with numerous officials in the EAC countries. Unfortunately, these meetings have done little to dissuade the EAC from phasing-in this wrongheaded ban. In June 2016, the Tanzanian legislature voted to approve a budget that doubles import duties on secondhand clothing, increasing these tariffs from $0.2 per kilogram to $0.4 per kilogram.[3] That same month, Kenya and Uganda announced tariff increases on used clothing imports similar to those announced by Tanzania according to our members' customer contacts in these countries. Around the same time, the government of Rwanda raised import duties on secondhand clothing by a whopping 1,150 percent (from $0.2 per kilogram to $2.5 per kilogram) and by 900 percent on used shoes (from $0.5 per kilogram to $5 per kilogram).[4] These tariff increases are so high that they amount to a de facto ban on our industry and make clear that these countries are moving full steam ahead on implementing it.

These additional duties are already having a dramatic negative impact on the industry, as evidenced by a recent SMART survey of members of our industry. These results demonstrated a shocking decline in business with the EAC member countries and a corresponding fall in employment within the United States.[5] Namely, the survey found:

- 40% of SMART respondents have already reduced employment by 25% or more since the 2nd and 3rd quarters of 2016 when EAC countries raised their duties in anticipation of implementing the full used clothing ban.

- More than 88% of SMART survey respondents have experienced a reduction of 25% or more in their revenues since the implementation of duty increases by the EAC countries in the 2nd and 3rd quarters of 2016.

- If the ban were completely put into place, more than 52% of industry respondents say they would be forced to reduce their number of employees by 50% or more.

- More than 94% of respondents said a full ban of used clothing within the EAC would cause them to experience a 25% to 75% reduction of revenues.

A recent report that we received from a U.S. based non-vessel operating common carrier (NVOCC) that specializes in shipments of used clothing from U.S. ports to Africa substantiates

[3] "Tanzania: House Passes 2016/17 Budget as Opposition Remains Out." All Africa, 21 June 2016, < http://allafrica.com/stories/201606210541.html>
[4] "Rwanda multiplies import duties on used items," Daily Nation, 4 July 2016. http://www.nation.co.ke/business/Rwanda-multiplies-import-duties-on-used-items/-/996/3278548/-/fvelak/-/index.html
[5] Based on results from an industry survey conducted in Q1 2017.

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our survey findings. This company, which has extensive experience in East African trade lanes, estimated that its traffic to East African ports has declined by 75% since the increase in duties last year.

The aforementioned points are highly illustrative of the damage already being caused by EAC policies. Based on these findings, SMART estimates the implementation of the interim duty increases put into place by certain EAC countries last summer has led to a current loss of 5,000 jobs in the private sector of the U.S. used clothing industry and the loss of another 19,000 in the not-for-profit sector.

Considering the disruption we are witnessing in the face of increased duties, SMART cannot overstate its concern about the impacts this ban will have on our industry. The East African Community nations have become one of the most important markets for U.S. industry's used clothing exports, with direct American exports to the EAC member countries totaling approximately $24 million in 2016.[6] However, used clothing is also exported from the U.S. into Canada, India, UAE, Pakistan, Honduras and Mexico where it is processed and then re-exported into the EAC. We estimate conservatively that the value of U.S. sourced goods that flow via these other countries into the EAC is $100 million.[7] In other words, when taking into account both direct and indirect shipments, the total amount increases dramatically to $124 million or about 22 percent of the U.S. industry's total exports each year. It should be noted that this is substantially less than in recent years due to the effects of the recent duty increases and announcement of the ban.

We believe that as many as 40 U.S. used clothing exporters are directly involved in trade with the EAC. Again, because of the nature of this business, these companies are all small- and medium-sized enterprises. This estimate increases substantially when we take into account the various for-profit and not-for-profit clothing collectors and charitable organizations who supply the raw material which gets processed and ultimately exported directly and indirectly to the EAC. These companies are located around the country and include but are not necessarily limited to the following states: New York, Pennsylvania, Maryland, Georgia, Florida, Texas, California, and Washington. The various not-for-profit collectors are located more evenly throughout the country and are probably located in virtually all of the states.

Industry-wide, we estimate conservatively that at least 40,000 U.S. based jobs within the private sector in collection, processing and distribution will be negatively impacted by this ban. That figure increases dramatically when taking into account those working within the not-for-profit sector. Based on recent conversations with our not-for-profit partners and given figures discussed by Council for Textile Recycling (CTR), the not-for-profit sector easily includes another 150,000 employees.[8] Industry counterparts in Canada, the United Kingdom and the European Union are similarly concerned about the impacts of this ban and have engaged their public officials who are voicing concerns to the EAC leaders as well.

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[6] Based on 2016 U.S. International Trade Commission *Dataweb* data for HTS 6309.

[7] Based on industry market data and estimates.

[8] Based on estimates by the Council for Textile Recycling.

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Per SMART's calculations above, $124 million in revenues from export trade would be lost, but untold millions would further disappear from various charities. Indeed, well-known organizations like Goodwill, St. Vincent de Paul and others rely on the sale of donated used clothing to industry exporters as a means to fund their worthwhile charitable activities. Eliminating an important export destination like the East African Community will depress prices for secondhand clothing and will dramatically reduce the amount of money these very worthy not-for-profits receive to support their highly beneficial programs. The values mentioned don't even express the untold environmental costs and damage that would be done within the U.S. as more perfectly wearable used clothing is increasingly discarded into local landfills.

Paradoxically, this ban will create crushing economic consequences throughout the EAC as well. Researchers and officials estimate that buying, selling, repairing and/or altering imported secondhand clothing and shoes generate hundreds of thousands of jobs in the EAC, giving workers there the ability to support themselves and provide for their families. Eliminating these jobs will force these entrepreneurs and others into poverty at a time when these countries cannot withstand any additional economic hardship.

Moreover, banning secondhand clothing will also eliminate much needed access to affordable, quality apparel, creating a void that will be filled by cheap substitutes from China and the Far East, which will promote illegal smuggling. For so many in these countries that are existing on the equivalent of 1-2 dollars or less a day, secondhand clothing and shoes provide their only meaningful access to quality apparel, making their lives more difficult. A recent article from Rwanda notes that with a given amount of money, a person can purchase 10 pieces of used clothing. If they are required to buy new clothing (even locally made) they can only afford 2 pieces of clothing. According to those news reports, at least 80 percent of the population (or more) cannot possibly pay to clothe themselves if they have to depend on new clothing alone.[9]

Additionally, while criminalizing used clothing eliminates legal access to these imports, it will certainly not get rid of the need for them. Instead, it will lead to a deluge of imports of cheap, poorly made apparel from China and elsewhere as well as illegal smuggling. While it is generally accepted within the EAC that the ban on used clothing imports is to protect and expand local textile manufacturing, paradoxically no duty increases have been announced for imports of Chinese and other Asian produced textiles. Increased low-quality imports from Asia already have and will continue to do far more to displace the domestic textile industry than the presence of used clothing ever would, while the contraband will create headaches and corruption from the border to the selling point and lead to a loss of government revenue from a previously legal source.

It should be noted that while ban proponents often cite the growth of secondhand clothing imports as the reason for the decline of the East African textile industry, in reality, the main cause is the elimination of the import quota system for textiles and apparel when the Multi Fiber Agreement (MFA) was terminated in January 2005. While it was in place, the MFA had limited

[9] "Rwanda: Low-Income Earners Worried Over Ban on Second-Hand Clothes." Allafrica.com, 2016 April 27. <http://allafrica.com/stories/201604280018.html>.

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the number of textiles that any country could export to developed nations, effectively restricting Chinese shipments and enabling African countries to compete. Once the MFA ended, African markets (and others throughout the world) were deluged by cheap and low-quality new imports from countries like China, costing hundreds of thousands of jobs and decimating the African industry.[10] Surprisingly, despite the clearly harmful impacts these Chinese shipments have had, the EAC countries have not moved to ban these new clothing imports. Or perhaps not surprisingly—after all, China is investing very heavily in Africa right now.

It should also be mentioned that the very concept of banning the importation of an otherwise legitimate product in order to protect and develop one's own industry goes directly counter to the concept of developing a market based economy, as is required of AGOA beneficiaries. Articles in respected newspapers indicate that Rwanda in particular has privileged industries owned by its leading political party the Rwanda Patriotic Front (RPF) and requires the local business community to rent and invest according to Government dictates.[11] By placing a de facto ban on the imports of used clothing, Rwanda demonstrates the anti-market based approach that the proposed EAC ban is meant to accomplish. If the U.S. government allows the EAC to continue to receive AGOA benefits in the face of a used clothing ban, there is a very large risk that other African governments and AGOA beneficiaries will see this as their opening to defy U.S. policy and take advantage of U.S. generosity promoted by AGOA while simultaneously doing considerable harm to U.S. industries.

Regardless of how misguided this ban may be for East Africa and U.S. trade policy with Africa overall, for this submission, SMART's primary concern is the damaging effect it would have on the U.S. industry and that it is a clear violation of the EAC's obligations under AGOA. As was noted in a July 18, 2016 *Federal Register* notice announcing the 2016 annual AGOA review,

> "The President may designate a country as a beneficiary sub-Saharan African country eligible for these benefits of AGOA if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of AGOA (19 U.S.C. 3703); and (2) section 502 of the 1974 Act (19 U.S.C. 2462).
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> Section 104 of AGOA includes requirements that ***the country has established or is making continual progress toward establishing, inter alia: A market-based economy***; the rule of law, political pluralism, and the right to due process; ***the elimination of barriers to U.S. trade and investment; economic policies to reduce poverty;*** a system to combat corruption and bribery; and the protection of internationally recognized worker rights." (emphasis added)

A ban on secondhand clothing imports would clearly contradict the requirement that AGOA beneficiaries work towards establishing a market based economy and goes directly counter to

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[10] "Loss of textile market costs African jobs." African Renewal Online, 2006 April, 18. <http://www.un.org/africarenewal/magazine/april-2006/loss-textile-market-costs-african-jobs>.

[11] "Rwanda: If you build it, they may not come." *The Economist*, 4-10 March 2017, 37. "Business in Rwanda: Party of business." *The Economist*, 4-10 March 2017, 53.

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eliminating barriers to U.S. trade and investment. It is particularly galling that the EAC nations would eliminate secondhand clothing imports at the same time our country is providing unilateral access to the U.S. market that is specifically designed to benefit African textile and apparel exports. This ban and duty increases will succeed in creating greater poverty in the East African nations by eliminating hundreds of thousands of jobs in the EAC and making any available clothing far less affordable. The ban also represents a slap in the face of U.S. exporters and taxpayers by abusing U.S. generosity offered via the AGOA program.

Conclusion and recommendation

We believe the aforementioned negative impacts our industry is already experiencing coupled with the anticipated severe economic consequences and dramatic job losses if the ban is allowed to proceed justifies an out-of-cycle review of Kenya, Tanzania, Rwanda and Uganda. Assuming this review concludes these four countries are indeed violating the cited AGOA eligibility criteria, we would recommend the TPSC temporarily suspend these countries' duty-free access to the United States under AGOA for all currently eligible apparel exports until they take steps to reverse the ban by: 1) removing the increased duties and 2) halting any further activity aimed at implementing the ban. On behalf of SMART, I would like to thank you for considering this request. Should you have any questions or concerns, I can be reached directly at 443-640-1050, ext. 105 or via email at Jackie@kingmgmt.org.

Sincerely,

Jackie King

Jackie King, Executive Director
Secondary Materials and Recycled Textiles Association