

earlier disclosure. *See Daniels*, 144 F.3d at 1456 (stating, “In general, precedent establishes that although the applicant ‘does not have to describe exactly the subject matter claimed, . . . the description must clearly allow persons of ordinary skill in the art to recognize that [the applicant] invented what is claimed.’”) (citations omitted). *See also Owens*, 710 F.3d at 1368 (quoting *Ariad*, 598 F.3d at 1351).

When making this determination, the examiner would consider what the original/earlier application, in its totality (e.g., including the title, any descriptive statements, and the drawings), would have reasonably conveyed to an ordinary designer at the time of the invention, and how an ordinary designer in the art would have designed the article that is the subject of the design claim. Such considerations can include the nature and intended use of the article embodying the claimed design as identified by the title or description (*see, e.g.*, MPEP § 1503.01 I (9th ed. 2015)). If, based on these considerations, the examiner determines that an ordinary designer would not recognize upon reviewing the complete original/earlier application the later-claimed design in the original/earlier disclosure, the examiner would reject the claim for lack of written description (or in the case of a priority or benefit claim, the application would not be entitled to the earlier date).

Since the Office has the initial burden of establishing a *prima facie* case of lack of written description, should an examiner determine that a rejection is appropriate, the examiner must set forth express findings of fact which support the lack of written description determination (*see* MPEP § 2163 for examination guidelines pertaining to the written description requirement). Upon reply by applicant, before rejecting the claim again under 35 U.S.C. 112(a) for lack of written description, the examiner would need to review the basis for the rejection in view of the record as a whole, including amendments, arguments, and any evidence submitted by applicant, such as affidavits or declarations.

If the record as a whole demonstrates that the written description requirement is satisfied, the rejection would not be repeated in the next Office action. If, on the other hand, the record does not demonstrate that the written description is adequate to support the claim, the examiner again would reject the claim under 35 U.S.C. 112(a), fully respond to applicant’s rebuttal arguments, and properly treat any further showings submitted by applicant in the reply. When rejecting the claim again for lack

of written description, the examiner would need to thoroughly analyze and discuss any affidavits or declarations filed by applicant that are relevant to the 35 U.S.C. 112(a) written description requirement. *See In re Alton*, 76 F.3d 1168, 1176 (Fed. Cir. 1996).

#### IV. Request for Public Comments

The USPTO is requesting written public comments on the USPTO’s proposed approach for applying the written description requirement in design applications as discussed in this notice. Because the USPTO is considering providing examples after reviewing public comments on the proposed approach, the USPTO also is requesting specific examples that the public believes would be helpful to illustrate the proposed approach or any suggested approach for applying the written description requirement in design applications. In particular, the USPTO is seeking examples from the public that demonstrate adequate written description as well as examples that demonstrate a lack of written description. Additionally, examples of situations in which the presence or lack of written description is not readily apparent, *i.e.*, examples that are close to the line between adequate written description and insufficient written description, would be most helpful. Once the USPTO has considered the comments and examples received, the USPTO will determine how best to proceed in view of the public feedback on the proposed approach for applying the written description requirement in design applications.

Dated: April 8, 2016.

**Michelle K. Lee,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Request for Public Comment on a Commercial Availability Request Under the U.S.-Morocco Free Trade Agreement

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for modification of the U.S.-Morocco Free Trade Agreement (USMFTA) rules of origin for dresses,

skirts, blouses and tops made from certain woven fabric.

**SUMMARY:** The Government of the United States received a request from the Government of Morocco, dated March 1, 2016, on behalf of ARYANS to initiate consultations under Article 4.3.3 of the USMFTA. The Government of Morocco is requesting that the United States and Morocco (“the Parties”) consider revising the rules of origin for dresses, skirts, blouses and tops to address availability of supply of certain woven fabric in the territories of the Parties. The President of the United States may proclaim a modification to the USMFTA rules of origin for textile and apparel products after the United States reaches an agreement with the Government of Morocco on a modification under Article 4.3.6 of the USMFTA to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. CITA hereby solicits public comments on this request, in particular with regard to whether certain woven fabric can be supplied by the U.S. domestic industry in commercial quantities in a timely manner.

**DATES:** Comments must be submitted by May 16, 2016 to the Chairman, Committee for the Implementation of Textile Agreements, Room 30003, United States Department of Commerce, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Maria D’Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-1550.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 203 (j)(2)(B)(i) of the United States—Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USMFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

**Background:** Article 4.3.3 of the USMFTA provides that, on the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. In the consultations, pursuant to Article 4.3.4 of the USMFTA, each Party shall consider data presented by the other Party that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner.

The USMFTA Implementation Act provides the President with the authority to proclaim as part of the HTSUS, modifications to the USMFTA rules of origin set out in Annex 4–A of the USMFTA as are necessary to implement an agreement with Morocco under Article 4.3.6 of the USMFTA, subject to the consultation and layover requirements of Section 104 of the USMFTA Implementation Act. See Section 203(j)(2)(B)(i) of the USMFTA Implementation Act. Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that appropriate officials or agencies of the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

The Government of the United States received a request from the Government of Morocco, dated March 1, 2016, on behalf of ARYANS, requesting that the United States consider whether the USMFTA rule of origin for dresses, skirts, blouses and tops classified in HTSUS chapter 62, should be modified to allow the use of 87%–93% cotton/5%–9% polyester/2%–4% elastane woven fabric classified in subheading 5209.42 of the HTSUS that is not originating under the USMFTA.

CITA is soliciting public comments regarding this request, particularly with respect to whether 87%–93% cotton/5%–9% polyester/2%–4% elastane woven fabric described above can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. Comments must be received no later than May 16, 2016.

Interested persons are invited to submit such comments or information electronically to *OTEXA\_MoroccoFTA@trade.gov*, and/or in hard copy to: Chairman, Committee for the Implementation of Textile Agreements, Room 30003, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

If comments include business confidential information, commenters must submit a business confidential version in hard copy to the Chairman of CITA, and also provide a public version, either in hard copy or electronically. CITA will protect any information that is marked business confidential from disclosure to the full extent permitted by law. All public versions of the comments will be posted on OTEXA's Web site for Commercial Availability

proceedings under the Morocco FTA: [http://otexa.trade.gov/Morocco\\_CA.htm](http://otexa.trade.gov/Morocco_CA.htm).

**Joshua Teitelbaum,**

*Chairman, Committee for the Implementation of Textile Agreements.*

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comment on a Commercial Availability Request Under the U.S.-Morocco Free Trade Agreement

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for modification of the U.S.-Morocco Free Trade Agreement (USMFTA) rules of origin for certain women's pants made from certain woven fabrics.

**SUMMARY:** The Government of the United States received a request from the Government of Morocco, dated March 9, 2016, on behalf of MODALINE HOLDING to initiate consultations under Article 4.3.3 of the USMFTA. The Government of Morocco is requesting that the United States and Morocco (“the Parties”) consider revising the rules of origin for women's pants to address availability of supply of certain woven fabrics in the territories of the Parties. The President of the United States may proclaim a modification to the USMFTA rules of origin for textile and apparel products after the United States reaches an agreement with the Government of Morocco on a modification under Article 4.3.6 of the USMFTA to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. CITA hereby solicits public comments on this request, in particular with regard to whether certain woven fabrics can be supplied by the U.S. domestic industry in commercial quantities in a timely manner.

**DATES:** Comments must be submitted by May 16, 2016 to the Chairman, Committee for the Implementation of Textile Agreements, Room 30003, United States Department of Commerce, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Maria D'Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–1550.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 203 (j)(2)(B)(i) of the United States—Morocco Free Trade Agreement

Implementation Act (19 U.S.C. 3805 note) (USMFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

**Background:** Article 4.3.3 of the USMFTA provides that, on the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. In the consultations, pursuant to Article 4.3.4 of the USMFTA, each Party shall consider data presented by the other Party that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner. The USMFTA Implementation Act provides the President with the authority to proclaim as part of the HTSUS, modifications to the USMFTA rules of origin set out in Annex 4–A of the USMFTA as are necessary to implement an agreement with Morocco under Article 4.3.6 of the USMFTA, subject to the consultation and layover requirements of Section 104 of the USMFTA Implementation Act. See Section 203(j)(2)(B)(i) of the USMFTA Implementation Act. Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that appropriate officials or agencies of the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

The Government of the United States received a request from the Government of Morocco, dated March 9, 2016, on behalf of MODALINE HOLDING, requesting that the United States consider whether the USMFTA rule of origin for women's pants classified in HTSUS heading 6204 should be modified to allow the use of certain woven fabrics that are not originating under the USMFTA. The fabrics subject to this request are:

Fabric 1: 45%–52% polyester, 45%–52% rayon, 1%–7% spandex woven synthetic bi-stretch fabric, classified in subheading 5515.11 of the HTSUS;

Fabric 2: 60%–68% polyester, 29%–37% rayon, 1%–7% spandex woven poly-viscose fabric, classified in subheading 5515.11 of the HTSUS;