



January 31, 2007

David M. Spooner
Assistant Secretary for Import Administration
Room 1870
Department of Commerce
14th Street and Constitution Ave., NW
Washington, DC 20230

REF: Request for Public Comment - Import Monitoring of Textile and Apparel Products from Vietnam (72 FR 2860)

Via Email: vietnam-texapp-monitor-FRcomments@mail.doc.gov

Dear Assistant Secretary Spooner:

On behalf of the American Apparel & Footwear Association – the national trade association of the apparel and footwear industries, and their suppliers – I am writing in response to the ongoing request for comments in connection with the proposed monitoring program of U.S. imports of textile and apparel products from Vietnam.

As you know, our members produce and market textiles and apparel in the United States and around the world, including Vietnam. Representing companies that import apparel from Vietnam and that produce apparel in the United States, we are well positioned to offer comments and insight on this program.

We appreciate that the Department is soliciting ongoing input from the trade community. Further, we would like to thank the Department for incorporating several of the concepts we had previously advanced into the import monitoring program. In particular, we are pleased that the Department will be developing an email notification system to advise the trade of developments in the import monitoring program. In addition, we appreciate the Department's statement that the import monitoring program will not impose any additional burdens on the trade.

Nevertheless, we remain deeply concerned about several elements of this program. In particular, we note that a number of process oriented recommendations we made in comments submitted on December 27, 2006 have yet to be incorporated. We respectfully request that they be considered. Our comments below present additional elaboration on those comments.

First, we note that the January 23, 2007 Federal Register notice does not cite any statutory authority for the Import Monitoring program. This is the second time the Department has published a notice relating to this program. Yet, in neither case, has the Department cited the statutory authority it is claiming as the basis of this import monitoring program. Given the on-going questions that continue to be raised regarding the Department's authority to engage in the Import Monitoring program, and given the Department's statements that this program will be done consistent with existing laws, we believe it is imperative that the Department not proceed unless it is first able to adequately cite the statutory authority underpinning the program. Our remaining comments are made on the assumption that the Department is able to sufficiently satisfy this requirement.

Second, we believe there continue to be widespread misperceptions about the nature of the import program that has been created. These misperceptions are contributing to an atmosphere of incredible uncertainty and are fueling a crisis of expectations. For example, a press statement released by the National Council of Textile Organizations just this week (on January 29, 2007), states (emphasis added), "Senators Dole and Graham should be congratulated for their success in ***securing a new program by which the U.S. government will self-initiate dumping cases against Vietnam for textile and apparel products.***" This statement suggests that the Administration has made a commitment to self-initiate anti-dumping cases. However, based on numerous conversations with Department officials and a close reading of the letter Secretary Gutierrez and Ambassador Schwab sent to Senators Dole and Graham last September, we understand that the Administration has made no commitment to self-initiate anti-dumping cases, and has only created a monitoring program that might, assuming certain legal and economic thresholds are satisfied, lead to a self-initiated anti-dumping case. We strongly urge the Department to use any Federal Register notices, and other official and unofficial communications on this issue to make absolutely clear the scope of the current commitment and its possible relationship to any potential self-initiated anti-dumping investigations.

Third, with a view to creating a more predictable program, we urge the Department to follow a number of recommendations that will create more transparency and understanding of the import monitoring process and ensure that the program will be administered in a way consistent with trade remedy law. As noted earlier, a number of these recommendations were included in our earlier comments.

- A. The Department should establish and publicize the methodology it will use to conduct monitoring and reviews. The methodology should provide for clear benchmarks, dates, and deadlines so the trade can follow this process closely. The trade should be able to understand what factors and what data sources the Department is using as it makes its analysis. We are troubled

that “monitoring” is already occurring although the procedures the Department is using to conduct this monitoring have not yet been made public.

- B. The Department should publish all data on a regular and timely basis on its web site so the trade can see in real time the data that is available to the Department. Moreover, the Department should establish and publicize thresholds and triggers it will follow in determining what products are being monitored (within the five product groupings – see below) and in determining which of those products may be subject to potential anti-dumping investigations. In this way, the trade can understand what data the Department is relying upon for this program and, more importantly, what the data will mean.
- C. The Department should clarify that no products outside the five categories (already identified in the January 23, 2007 Federal Register notice) will be subject to monitoring during the life of this monitoring program. Moreover, the Department should clarify exactly which products in those categories will be monitored. Since meaningful monitoring at a Category level is not practical – because each category covers many diverse individual product lines – the Department should clarify which HTS numbers in those five categories are actually being monitored. Finally, before any HTS numbers in these product groupings are added to the list of monitored products, the Department should solicit comment, via a Federal Register notice, on the advisability of monitoring additional products.
- D. The Department should make clear that monitoring (again of products within the five identified product groupings) will only occur on imports from State-owned facilities in Vietnam since that is the basis of the commitment made in the September 2006 letter to Senators Dole and Graham.
- E. The Department should make clear that certain categories of domestic production will NOT be included in any monitoring activity. Those categories – which cannot be factored into an anti-dumping investigation – include
 - a. Berry Amendment production,
 - b. Production of Federal Prison Industries,
 - c. Production of cut parts sent for offshore assembly, and
 - d. Production of fabrics and yarns (since the only articles being monitored are apparel).
- F. The Department should make clear that it will not self-initiate an anti-dumping investigation unless all the factors that would lead to a finding of

dumping do indeed exist. The Department should also specify clearly those factors, including the requirement that a domestic industry making the same product (and not an input to that product), be materially injured because of dumping of that product from Vietnam. Moreover, the domestic industry, as required by U.S. statute, must support the initiation of the dumping investigation.

In sum, the Department must provide additional information that makes fully transparent how it intends to do the monitoring so that the trade can fully understand the program and anticipate the results of the program. The Department has an obligation to ensure that the final result, in addition to being consistent with U.S. law and WTO obligations, provides a predictable regulatory environment that poses no new burdens on U.S. businesses.

Thank you for the opportunity to submit comments on this program.

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Burke". The signature is written in black ink and is positioned below the word "Sincerely,".

Kevin M. Burke
President and CEO