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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

Re: Comments Regarding Import Monitoring Program on Textile and Apparel Products from Vietnam

Dear Assistant Secretary Spooner:

These comments are filed on behalf of Hanesbrands Inc. ("Hanesbrands") responding to the Department of Commerce's ("the Department") request for public comment with respect to the Department's newly implemented monitoring program of textile and apparel products from Vietnam.[1] Hanesbrands has over 100 years experience in the textile and apparel industry. Their nationally recognized brands include Bali, Barely There, Playtex, Wonderbra, Champion, L'eggs, Just My Size and Hanes Hosiery.

[1] *Request for Public Comment-Import Monitoring of Textiles and Apparel Products from Vietnam*, 72 Fed. Reg. 2860 (January 23, 2007).

Hanesbrands is proud of the fact that their brands can be found in most American households and that they hold either the number-one or number-two U.S. market positions by sales for most product categories they sell.

The comments and suggestions provided below reflect Hanesbrands' significant experience and knowledge regarding the monitored industries. As these comments reflect, Hanesbrands' is concerned that the monitoring system as currently implemented presents significant unpredictability and burdens to the textile and apparel industry. Hanesbrands' urges the Department to introduce greater transparency and predictability into its monitoring program and to limit monitoring to products specifically manufactured by an identified domestic industry, upon request of that industry.

I.
The Vietnam Textile and Apparel Monitoring System Must be Predictable and Transparent

The Vietnam textile and apparel monitoring system must be predictable and transparent. Corporations, such as Hanesbrands, require predictability with respect to their business operations and transactions. As a result, Hanesbrands devotes significant corporate resources when choosing countries and suppliers to source merchandise to be sold for retail in the U.S. Hanesbrands sources apparel products from Vietnam, among other countries, based upon the quality of the product and the producers' ability to meet their sourcing needs. Currently, it is impossible for Hanesbrands to source many of the products which Hanesbrands sells in the U.S. through domestic sources as there is often no U.S. production of the product, or when there is, domestic producers cannot meet their sourcing or quality needs.

The unpredictable nature of the current monitoring system is having a chilling effect on trade between Vietnam and the United States. The current lack of information regarding exactly how the Department will decide whether to self-initiate, the rules and procedures that will be followed with respect to the monitoring program and identification of specific products that are subject to potential antidumping investigations makes it virtually impossible for corporations to make reasoned sourcing decisions with respect to Vietnamese textile and apparel products with any sense of comfort. The discussion below offers suggestions regarding how the Department may address these important issues, making the program more user-friendly for all involved, creating a predictable business atmosphere and preserving important Department resources.

A. The Vietnam Monitoring Program Should Be Transparent and Predictable

To date, detailed information regarding the specifics of the Vietnam monitoring program and any criteria that the Department will follow in determining whether to self-initiate an antidumping investigation has not been publicly released. As a result, the textile and apparel industry can only speculate, which as noted above, makes business decisions and planning difficult at best. To prevent surprises and to enable Hanesbrands to conduct its business in a manner that bests serves the American consumer, Hanesbrands respectfully requests that the Department provide the public with a detailed framework (1) addressing the rules and procedures that will be followed with respect to the Department's monitoring and biannual review process; (2) identifying the domestic industry and (3) identifying the exact products that will be monitored and that are subject

to potential self-initiated antidumping investigations. Provided below are suggestions and comments to assist the Department in developing such a framework.

B. Rules and Procedures

To instill a sense of predictability in the current monitoring program it is important that the Department set forth rules and procedures to be followed with respect to the Department's monitoring program and biannual review process. Formal rules and procedures will ensure that interested parties understand (1) how the Department is monitoring goods; (2) what the Department will consider when determining whether to self-initiate an antidumping proceeding and (3) interested parties' role and ability to participate (both with respect to monitoring and the Department's biannual evaluation) by providing information such as industry know-how and product information. So that all interested parties understand the exact scope of the Department's monitoring program and methodology to be used in the biannual evaluations, Hanesbrands requests that the Department publish a notice in the Federal Register setting forth:

- Rules and procedures relating to the Department's monitoring program. These rules should identify specific procedures for including/excluding specific producers and products from the monitoring program if certain criteria are met;

- Rules and procedures to be followed with respect to the Department's biannual evaluation;

- All criteria that the Department will consider when determining whether or not to initiate an antidumping investigation. Criteria should set forth trigger indicators that the Department will rely upon when determining whether to initiate an antidumping case. Trigger indicators are important because they will provide identifiable red flags to the trading community of potential antidumping proceedings;

- Specific dates and deadlines for conducting biannual evaluations;
- Set forth rules and procedures for interested parties to participate in biannual reviews including participation in hearings, the ability to submit evidence, and the ability to submit case briefs; and
- Identify all production templates.

Hanesbrands further encourages the Department to continue its current practice of making all comments and evidence publicly available. Hanesbrands requests that the Department continue to solicit and consider comments from interested parties with respect to decisions relating to monitoring including the products covered by the monitoring program, the scope of the domestic industry, production templates and identification of proxy countries.

C. Products Subject to Monitoring Should Be Limited to Products Produced by the Domestic Industry

Because antidumping investigations may only be brought with respect to products for which there is a domestic industry, Hanesbrands requests that the Department limit monitoring to those products that are produced in the United States. By limiting the monitoring and biannual evaluation process to products produced in the U.S., the Department reduces unnecessary burdens on importers and consumers and preserves limited Department resources. The antidumping statute defines industry as "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[2] The domestic like product is "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an

[2] *19 U.S.C. § 1667(4)(A).*

investigation..."[3] Based upon these definitions, it is important that the Department determine from the onset what products are produced in the United States and limit monitoring only to those products.

In defining the domestic industry, and accordingly products to be covered by the monitoring program, it is important that the Department only include those producers who sell the majority of their merchandise for the commercial market. Producers who sell primarily through other marketing channels, such as government procurement, should be excluded. One example of this are producers who sell primarily through the Berry Amendment which requires the U.S. Department of Defense to buy clothing and certain textile goods[4] from U.S. producers.[5]

In addition to the above, the Department should limit monitoring to products for which the domestic industry has requested monitoring or at the very least products that meet industry support requirements of petition-initiated antidumping investigations. The antidumping statute provides that the Department shall find that a petition has been filed on behalf of an industry where (1) the domestic producers who support the petition account for at least 25 percent of the total production of the domestic like product and (2) the domestic producers who support the petition account for more than 50 percent of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.[6] It makes no sense to have less support for such an extraordinary measure as self-initiation of an antidumping proceeding.

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[3] *19 U.S.C. §§ 1677 (10).*

[4] *See 10 U.S.C. § 2533a.* The Berry Amendment covers cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabric, materials, or manufactured articles.)

[5] *Id.*

[6] *19 U.S.C. § 1673a(4)(A)(i)* and*(ii).*

In addition, Hanesbrands urges the Department to define domestic production as merchandise wholly produced in the United States. Entities that simply cut components in the United States and then send those components offshore for sewing and finishing should not be considered a U.S. producer under U.S. antidumping law.[7] This definition is consistent with *19 U.S.C. § 3592(b)(3)(A)* which instructs that the origin of a good will be the country, territory or possession where the most important assembly or manufacturing process occurred.

D. Monitoring of Vietnamese Producers Should be Limited

To limit the current chilling effect of the Department's monitoring program, the Department should limit monitoring to those producers that are state-owned enterprises. Secretary Gutierrez's September 28, 2006 letter indicated that the Administration was introducing the monitoring system to address situations where "Vietnam may continue to offer prohibited subsidies to the state run textile and apparel industry, which could result in unfair competition in this sector." A large percentage of Vietnam producers are foreign-owned entities that receive no state subsidization. As Vietnam was required to provide a list of subsidies when it became a member of the WTO, the U.S. should be able to confirm that foreign controlled corporations were not unlawfully subsidized. Accordingly, these entities should be excluded from the Department's monitoring program.

Likewise, the Department should develop a procedure where Vietnamese producers that neither receive subsidization nor sell below a trigger price established by

[7] Production under 9802 schemes should be excluded from domestic production. One example of this would be American yarn sent to Costa Rica for knitting for shape into sock tubes. The tubes are then sent back to the United States to have the toes closed. This should be treated as an import rather than domestic production.

the Department should be exempt from the monitoring. This will reward companies acting in good faith to comply with U.S. antidumping law and preserve valuable Department resources. Furthermore, the Department should exclude from monitoring all products which account for less than 3 percent of total U.S. imports of that product. Costs associated with monitoring such miniscule level of imports far outweighs potential benefit that would be provided to the domestic industry.

Finally, the Department should limit its monitoring to the five sensitive product categories identified by the Department: trousers, shirts, underwear, swimwear and sweaters. Self-initiation of antidumping investigations is highly unusually and should be limited to those products which are sensitive. All other products should be excluded from the monitoring system and should be subject to antidumping investigations only based upon a petition filed by the domestic industry.

II.
Monitoring Data Must be Reliable and Consistent

The Department is responsible for administering the antidumping laws in a fair, accurate manner. In conducting antidumping investigations the Department makes "apples to apples" comparisons. Data collected as part of the Department's monitoring program should reflect these important tasks. Specifically, data should be (1) accurate and problem-free and (2) domestic and import data must be consistent. Moreover, to keep the monitoring system as transparent as possible it is important that data be released to the public in a timely fashion.

A. Data Relied upon by the Department must be Problem Free

Data relied upon by the Department must be problem free. There are several problems with data currently being considered by the Department as indicated in its January 23, 2007 letter. First, product categories used for collecting data, the traditional three-digit textile category and the 10 digit Harmonized Tariff System (HTS) code, are too broad to permit accurate analysis. For example, the three digit category for "men's and boys' cotton trousers and shorts", category 347, includes ski pants, boys shorts and men's trousers. Similarly, HTS heading 6144 covers a wide range of goods including: aprons, boiler suits, protective clothing worn by mechanics and coveralls worn by surgeons in the operating room.

In addition, the time periods for which the Department considers data can lead to significant distortions. The Department has indicated that it will evaluate data on a six month basis to determine whether to self-initiate antidumping proceedings. The textile and apparel industry, however, is cyclical and sales are often seasonal in nature. For example, sweaters, wool coats and swimwear tend to be sold at distinct time periods during the year. Evaluating data on a biannual basis may not reflect these seasonal influences leading the Department to believe that there is in increase in imports or dumping where there is in fact none. Nor does the Department's monitoring process appear to adjust for fluctuations in value resulting from factors such as differences quality or changes in product mix.

In addition there is a lack of transparency as to how the data is being collected. It is our understanding that census data relied upon by the Department is manually manipulated to place it into the three-digit category. The methodology used by the

Department should be disclosed to the public and the Department should provide interested parties an opportunity to comment.

B. Import Data and Domestic Production Data are not Comparable

It is also important to note that import and domestic data currently being collected by the Department is inconsistent. It is our understanding that production data for the U.S. industry is not collected on either the three-digit category or the 10-digit HTS number. As a result, comparisons and analysis results in an apples to oranges comparison. To reduce distortions with current data collection, the Department should require the domestic industry to provide data based upon the 10-digit HTS number and three digit category number. Moreover, as the Department must consider injury as part of its decision to self-initiate, it is important that the Department collect all data required by the International Trade Commission's questionnaire and make this information available to interested parties for comment and evaluation.

C. Data Must Be Available to Interested Parties in a Timely Fashion

It is also important that the data collected by the Department be made available to interested parties in a timely fashion. Hanesbrands suggest that this data be published on the Department's website on a weekly basis. In providing the data to parties, the Department should identify "red flags" in the data indicating that dumping may be occurring. Not only would this promote predictability, but it would enable both the United States and the Vietnamese government to address potential dumping issues in a timely fashion hopefully eliminating the need for a self-initiated antidumping proceedings.

III.
Antidumping Relief Must be Prospective in Nature

A. The Department Should Not Apply Critical Circumstances With Respect to Products Covered by the Monitoring Program

Trade restrictions resulting from the monitoring program should be only prospective in nature, in order to prevent unforeseen "surprises" to the trading community. Hanesbrands, as a matter of corporate policy, complies with all aspects of U.S. trade law, including antidumping law. The broad nature of the Department's monitoring program, coupled with the fact that very little information has been released regarding any trigger indicators which the Department will rely upon when deciding whether to self-initiate, makes it extremely difficult for importers, such as Hanesbrands, to anticipate antidumping investigations with respect to monitored products. To foster predictability for the apparel and textile industry and reduce any chilling effect that the Department's monitoring program has upon trade, Hanesbrands urges the Department to refrain from pursuing critical circumstances inquiries with respect to self-initiated antidumping investigations of monitored goods.

Should the Department decide to pursue critical circumstance inquiries, Hanesbrands urges the Department to publish a notice in the *Federal Register* providing a framework of the exact analysis to be followed by the Department in making its determination. As noted by the Department's policy bulletin, the critical circumstance provision exists to ensure that the antidumping remedy is not undermined by massive imports following the initiation of an investigation.[8] Critical circumstances may only be

[8] *Change in Policy Regarding Timing of Critical Circumstances Determination* dated October 15, 1998.

found where: (1) there is a history of dumping and material injury by reason of the dumped imports; or (2) the person by who or for whose account the merchandise was imported knew or should have know that the exporter was selling the merchandise at less than its fair value and (3) there have been massive imports of the subject merchandise over a relatively short period of time.[9]

To prevent any surprises to the trading community and to permit businesses to make sound business judgments, Hinesbrands requests that as part of this framework the Department limit its analysis of imports to the period beginning on the date of the investigation and ending at least three months later. Moreover, Hinesbrands requests that the Department specify exactly how much imports must increase for the Department to find critical circumstances. For example, will the Department find critical circumstances if the 15 percent threshold set forth in *19 C.F.R. § 351.206* is met or will the Department apply a higher standard. Finally, the Department should indicate how it will account for factors such as seasonality, product mixes and the impact of the recently ending quotas in its analysis.

B. The Department Should Permit Importers to Import Under Bond and Should not Require Cash Deposits Until an Antidumping Duty Order is Imposed

Hanesbrands requests that the Department continue its practice of permitting importers to import merchandise subject to an antidumping investigation under bond until an antidumping order is imposed. Section *19 U.S.C. § 1673b(d)(1)(B)* grants the Department authority "to order the posting of a...bond or other security" after making an

[9] *Id.*

affirmative preliminary determination in an antidumping investigation.[10] There is no reason to depart from the Department's current practice.

IV.
Conclusion

Hanesbrands thanks the Department for this opportunity to submit comments and respectfully requests that the Department make changes to its current monitoring program and biannual review process to make it predictable and transparent. Should you have questions or if Hanesbrands can be of further assistance, please let us know.

Respectfully submitted,

Kristen Smith

Kristen Smith
Sandler, Travis & Rosenberg, P.A.

cc: Jerry Cook
Vice President
Government and Trade Relations
Hanesbrands, Inc.

[10] *See. e.g. for example Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Activated Carbon from the People's Republic of China*, 71 FR 59721 (October 11, 2006).