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**JONES APPAREL GROUP, INC.  
250 RITTENHOUSE CIRCLE  
BRISTOL, PA 19007**

January 31, 2007

David M. Spooner  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N. W.  
Room 1870  
Washington, D. C. 20230

**Re: Monitoring of Textile and Apparel Products From Vietnam-  
Response to Second Request for Comments**

Dear Assistant Secretary Spooner:

As the Department is aware from our December 27, 2006 Comments, Jones Apparel Group, Inc. ("JAG") is an American company, publicly traded on the New York Stock Exchange. In 2005, JAG revenues were in excess of five billion dollars. As a Fortune 500 retailer of textile and apparel and an importer of custom textile and apparel products from Vietnam, JAG has a very strong interest in the Department's Vietnam monitoring program.

This set of JAG comments focuses on issues surrounding the Department's treatment of critical circumstances and the retroactive application of dumping duties in any dumping investigations that may be self-initiated. As a review of the comments below will indicate, it is, in our view, essential that the Department establish certain bright line standards to remove the

unnecessary confusion that exists as to how the Department will handle critical circumstances and the retroactive application of dumping duties.

The Department had pledged in the September 28, 2006 letters to Senators Dole and Graham that the Department will determine "whether critical circumstances exist that would allow for preliminary duties to be applied retroactively". Nevertheless, the Department did not refer at all to the retroactive application of antidumping duties in the first Federal Register notice requesting comments.<sup>1</sup> Concerned by this fact, in our December 27 Comments, JAG specifically addressed issues related to the retroactive application of antidumping duties. It was, therefore, encouraging to see the Department expressly deal with critical circumstances in the second request for comments.<sup>2</sup>

In the second request for comments, the Department states "Any application of critical circumstances in the context of a self-initiated investigation will be fully consistent with U.S. law..." However, in the actual day-to-day application of U.S. critical circumstances law, the Department has been less than consistent and far from transparent.

There is no reason, we submit, for the Department to fail to provide a reasonable degree of certainty in the area of retroactive application of dumping duties. Unlike the yet to be defined metrics for the monitoring program, the critical circumstances program is a self-contained, pre-existing, well-established, although less than transparent, program. The Department, we submit,

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<sup>1</sup> *Textile and Apparel Products From Vietnam: Import Monitoring Program; Request for Comments*, 71 Fed. Reg. 70364 (December 4, 2006)

<sup>2</sup> *Textile and Apparel Products From Vietnam: Import Monitoring Program; Request for Comments*, 72 Fed. Reg. 2860 (January 23, 2007)

should establish bright line standards on the following two specific issues: (1) What are the threshold elements that must be found to support a determination that critical circumstances exist? (2) What is the earliest date that textile and apparel entries may be subject to retroactive dumping duties in self-initiated investigations?

Given the fact that the Department's own regulations generally provide that, unless imports during a relatively short period of time increase by at least 15% over imports during an immediately preceding comparison period, the Department will not consider the imports to be massive. Without massive imports, no critical circumstances can be found to exist. The Department should expressly adopt the 15% test for critical circumstances evaluations for self-initiated dumping investigations against Vietnam.

U.S. importers are entitled to know, if critical circumstances are ultimately found to exist, the earliest date in a self-initiated investigation that the Department would retroactively impose dumping duties.<sup>3</sup> Again, the Department has a well established critical circumstances practice that could be easily incorporated into the monitoring program. According to that practice, the earliest date that dumping duties may be retroactively imposed is 90 days prior to the date a Department affirmative preliminary determination is published in the Federal Register. That principle, we submit, should be expressly adopted by the Department for self-initiated dumping investigations. In addition, the Department should expressly state that antidumping duties will

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<sup>3</sup> The second sentence under the Critical Circumstances heading in the second request for Comments is too confusing to be helpful. See 72 *Fed. Reg.* 2860, 2861 (January 23, 2002). We suggest that the second sentence be deleted from the Department's position on critical circumstances and replaced with a clear statement that the earliest date retroactive duties would be applied is 90 days prior to the date of publication of the preliminary determination, and in no event, earlier than the date an investigation is self-initiated.

David M. Spooner  
Assistant Secretary for Import Administration  
January 29, 2007  
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not, under any circumstances, be retroactively applied to imports that entered the United States prior to the date an investigation is self-initiated.

Respectfully submitted,

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