Vinson&Elkins

January 31, 2007

Filed Electronically

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

Re: Textile and Apparel Products from Vietnam: Import Monitoring Program; Second Request for Comments (72 FR 2860, January 23, 2007)

Dear Mr. Spooner:

These comments are filed on behalf of the Korea International Trade Association ("KITA") and the Korean Apparel Industry Association ("KAIA") in response to the Commerce Department's second request for comments on its intention to develop a monitoring program covering imports of textile and apparel products from Vietnam.

These comments follow closely on the heels of comments submitted by KITA and KAIA on December 27, 2006. Although some of the concerns reflected in our first set of comments appear to have been heeded, the most important of our concerns remain unaddressed. In the comments that follow we reiterate our previous comments and, where possible, provide additional detail in support of our positions.

The comments are provided in the attached paper. In accordance with the Department's notice, we are submitting these comments in electronic form, by email only.

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Please do not hesitate to contact the undersigned should you have any questions concerning the enclosed comments.

Respectfully submitted,

William H. Barringer
Daniel L. Porter
Matthew R. Nicely

Before the United States Commerce Department
International Trade Administration

Second Round Comments of
Korea International Trade Association (KITA) and
Korean Apparel Industry Association (KAIA)
Concerning
A Suggested Import Monitoring Program for
Textile and Apparel Products from Vietnam

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INTRODUCTION AND SUMMARY

These are the second round of comments filed on behalf of the Korea International Trade Association ("KITA") and the Korean Apparel Industry Association ("KAIA") concerning the Commerce Department's intention to develop a monitoring program covering imports of textile and apparel products from Vietnam. KITA and KAIA appreciate this additional opportunity to submit comments on this important issue.

A review of the Department's latest notice leaves us concerned that the monitoring program of imports from Vietnam – which the Department says it has already implemented – remains discriminatory and serves to chill trade between the U.S. and Vietnam. We urge the Department to remedy this obvious WTO violation.

We also urge the Department to ensure that it is not unwittingly using this program to protect apparel industries in other countries rather than apparel industries in the United States. In order to justify either a monitoring program or self-initiation of antidumping investigations, there must be an industry in the United States making a product like the imported product.

Indeed, we think it critical that if the Department maintains its monitoring program of apparel imports from Vietnam, it must narrow the product scope to those products for which there is production of a U.S. like product, and which are imported in more than negligible quantities.

As to surrogate countries, the Department must abide by its longstanding practice, which would result in rejection of the countries the U.S. textile industry recommends be used. The actual choice of surrogate countries, or the factors to which values from those countries would be applied, must wait until the product scope is more narrowly defined.

As to its evaluation process, the Department must clarify how it will conduct its injury analysis, from where it will derive all relevant injury and causation related data, how it will analyze the effects of other causes in its injury analysis, and how data relevant to normal value will be incorporated into its analysis and made available to the public.

Finally, the Department must clarify how it will implement the series of other procedural and substantive safeguards discussed in KITA/KAIA's first round of comments, including whether it intends to instill neutral decision-making into the process, how it intends to implement the consultative process, and how it will approach various substantive margin calculation issues.

I. THE DEPARTMENT'S PROGRAM IS DISCRIMINATORY

Nothing in the Department's most recent *Federal Register* notice alters our overarching view that the Department's monitoring program, accompanied by threatened self-initiated antidumping cases against imports of apparel products from Vietnam, is inconsistent with the basic principle of non-discrimination under the WTO. It reflects poorly on the United States –

and, more unfortunately, on the institution of the WTO – that a new Member would be introduced to the WTO in this manner.

The Department seeks to deflect criticism on this issue by suggesting in its most recent notice that this monitoring system is nothing more than a continuation of its existing monitoring program of all textile and apparel producing countries conducted by Import Administration's Office of Textiles and Apparel. This is, at best, disingenuous. If this was true, then there would be no need for the Department to announce this special monitoring program of imports from Vietnam, nor to invite and consider these comments. Indeed, the very specific nature of the Vietnam program – including identification of the five specific product groups from Vietnam on which the Department will focus its monitoring – creates a distinct and discriminatory program aimed at Vietnam.

The reason this is important is not merely because it violates basic WTO principles, but also because such discriminatory treatment unnecessarily and unfairly chills trade between Vietnam and the United States in apparel. If it was truly the case, as the Department claims, that the Vietnam monitoring program is merely part of a broader textile and apparel import monitoring program, it would not have resulted in the reduction in orders of Vietnamese products that has already occurred, since the risk of antidumping investigations of apparel exports from Vietnam would be no

greater than the risk of antidumping investigations of apparel exports from other sources.

There are only two ways to eliminate the WTO inconsistent discrimination against Vietnamese apparel exports: either eliminate the program entirely or make it a truly global monitoring/self-initiation program with equal impact on all exporting countries. While the latter approach would certainly level the playing field for Vietnamese exporters, it would at the same time be an absurd waste of resources of the U.S. Government. Given the fact that domestic producers have not filed antidumping petitions against imports from other sources that have been freed from the restraints of quotas, one must assume one of the following: (a) that an industry with proper standing to file antidumping petitions does not exist in the United States; (b) that imports are not injuring such an industry; or (c) that imports have not surged as a result of the termination of the quotas on the rest of the world. This, in turn, indicates that there is no need for a global monitoring/self-initiation program on textiles and apparel and that any such program is an unwarranted use of government resources. This also raises the question of why the U.S. is assuming that the termination of quotas on Vietnam will create the circumstances for an antidumping investigation when this has not been the case with respect to other countries which have been freed from the restraints of the quotas. In short, if one looks closely at

the discrimination issue, it leads to the conclusion that import monitoring is simply not needed, whether with respect to Vietnam or some other source.

II. THE DEPARTMENT MUST NOT PROTECT OTHER FOREIGN INDUSTRIES

It is telling that the Department's Fact Sheet announcing its second invitation for comments states that the Department will vigorously enforce U.S. trade laws "to make sure Americans are treated fairly." This may sound nice, but it does not correctly reflect what the U.S. trade laws are meant to protect. U.S. trade laws are aimed at protecting U.S. producers from unfairly traded products that compete with U.S. production *of like products*. They are not generally available to any "American," as the Fact Sheet suggests.

We make this point not to pick nits with the Department's Fact Sheet, but because we are genuinely concerned that this U.S. policy initiative has been created for the wrong reasons. This is particularly so given the comments submitted by one of only three supporters of the monitoring program – the National Council of Textile Organizations ("NCTO") – in which the point was made that USTR's failure to include special safeguard or quota extension provisions in Vietnam's accession to the WTO "left the *U.S. textile industry* defenseless against unfairly traded *imports of apparel products* from Vietnam." NCTO Comments, page 1.

One should not assume this was sloppy draftsmanship on the part of NCTO. Rather, this comment and various statements made by the

Administration[1] make quite transparent the fact that the motivation of this monitoring program is not the legitimate protection of a U.S. apparel industry producing products like the allegedly unfairly traded imports, but rather the protection of the U.S. textile industry's favored apparel facilities *elsewhere*, such as in Latin America. Protection of this sort is so obviously illegal under both U.S. trade law *and* the WTO that it is nothing short of shameful that the U.S. Government is undertaking this effort.

Generally, U.S. production cannot include product that is cut, made, and trimmed in another country, even if the facilities that conduct this kind of processing are owned by U.S. companies or doing the work under tolling arrangements. Except where special rules apply (e.g., certain dyed and printed fabrics (19 C.F.R. § 102.21(e)(2)(i)), the country of origin for such product would be the country where the products are cut, made, and trimmed. 19 C.F.R. § 102.21(c)(3)(ii). Therefore, they cannot be considered U.S. production under any interpretation of U.S. law.[2]

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1 In addition to the statement in the Fact Sheet, the Administration's letters to Senators Dole and Graham tellingly state: "according to the domestic textile industry representatives, the structure of the U.S. textile and apparel industry may make it difficult for them to make effective use of this remedy." This can only mean that there is no industry producing products that compete directly with the imported products being targeted by the monitoring program.

2 See, e.g., Eurodif SA v. United States, Case Nos. 04-1209 and 04-1210 (Fed. Cir. March 3, 2005) (affirming Commerce's determination (i) that in order to be a "producer" for purposes of domestic industry support determination, an entity must have be undertaking the actual production of domestic like product within the United States and (ii) that the tolling regulation's definition of producer does not apply in the context of domestic industry support determinations).

III. THE DEPARTMENT MUST NARROW ITS PRODUCT COVERAGE

In light of the U.S. textile industry's apparent admission that this program is aimed at protecting their industry rather than a U.S. apparel industry, it is all the more critical that the Department identify – now, not later – which apparel products are actually produced in the United States. The Department claims in its notice that it "intends to focus on those traditional three-digit textile and apparel categories of greatest significance based on trade trends, composition of the U.S. industry and input from parties, as appropriate." There are at least two problems with this sentence. First, the Department indicates here that it will focus on "textile and apparel categories", yet previously and in other parts of the same notice the Department indicates its plan to focus on trousers, shirts, underwear, swimwear, and sweaters. The Department needs to be clearer about what specific products it is monitoring.

Second, although we appreciate the intent to analyze the "composition of the U.S. industry", the Department is putting the cart before the horse. It makes no sense to monitor broad categories of products imported from Vietnam, thereby chilling trade with this country, and then later deciding whether there is a legitimate industry to protect. Rather, the Department *must* identify whether there is an industry *first*, and then decide based on a presumably more limited list of products, which are worthy of monitoring. We and several other companies and associations made this point in our

initial set of comments, but the Department appears to have completely ignored the point. We urge the Department to review our first set of comments again and adjust its program accordingly.[3]

Third, while the Department also mentions that it intends to analyze imports at the 10-digit HTS code level -- which we recommended and appreciate -- this again is only useful if the Department identifies U.S. producers of those specific products or like products who support the notion of trade actions on Vietnamese product. To monitor products for which there is either no U.S. production or no interest for trade action is not only a waste of time and resources (both government and private), but an unnecessary impediment to continued trade between the United States and Vietnam. As we stated in our previous comments, the best source of this information is the domestic industry itself (if one exists), the existence of which the Department can investigate quite easily by simply issuing a *Federal Register* notice requesting (a) identification of companies that produce products like those imported from Vietnam (by 10-digit HTS item), and (b) proof of such production.

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[3] We remind the Department of one of our most important comments on this issue: "Thus, as a first step in deciding the scope of the monitoring, and because the monitoring program benefits the U.S. textile and apparel industry, we believe that Import Administration should request from domestic producers a list of the specific products produced by the industry that compete with products imported from Vietnam, the names and numbers of producers, and whether aggregate production is above a certain threshold amount (e.g. $50 million). [footnote omitted] This information should be made public and parties should be permitted to comment on the information." KITA/KAIA Comments, page 6. See also comments submitted by USA-ITA, et al, at pages 11-15.

Fourth, the Department must also identify products imported from Vietnam the quantity of which is so insignificant as not to warrant monitoring. As we stated previously:

> We also recommend that no monitoring be undertaken for any product from Vietnam that represents less than 3% of total U.S. imports of that product. This would avoid unnecessarily threatening AD cases against Vietnamese industries which represent too small a percentage of U.S. consumption to injure or threaten injury to the U.S. industry. This threshold is consistent with the negligibility standard of U.S. law (19 U.S.C. §1677(24)) and the WTO Antidumping Agreement (Article 5.8).
>
> We would also suggest that some threshold of overall market share be established, since this is relevant to the broader allegation of injury to the domestic industry. Assuming that the inclusion of products for monitoring is based on the assumption of non-cumulation for injury purposes, we believe that a minimum 15% share of the U.S. market is an appropriate threshold.[4]

An analysis of current import statistics would result in elimination of multiple products imported from Vietnam that do not meet the import share standard set forth above. Exclusion of products based on market share would require the Department to undertake an analysis of the existence and size of the domestic industry, which we have recommended separately.

We recognize and appreciate that the Department intends to modify its program as time progresses. This is cold comfort, however, for companies whose business is already affected by reduced orders from U.S. customers because the Department did not undertake the necessary analysis before it implemented this program.

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[4] KITA/KAIA Comments, page 8.

The best solution to this problem would be for the Department to put this entire program on hold until it has done the necessary homework to identify whether a U.S. industry exists for the products currently being monitored.

IV. THE DEPARTMENT MUST REJECT THE U.S. TEXTILE INDUSTRY'S FAVORED SURROGATE COUNTRIES

Proof that the U.S. textile industry's interests in this program are aimed at protecting its operations in Latin America is evident from the industry's proposal that the Department use Honduras or the Dominican Republic as the surrogate country for calculating normal value. The U.S. textile industry ships its fabric to these countries, out of which clothing is made for re-export to the United States under the favorable terms of the DR-CAFTA.[5] Of course the U.S. textile industry wants these countries' surrogate values to be used to value Vietnamese factors of production, because those values would be based on the U.S. industry's own sales. But, doing this is not only self-serving; it is distortive. The preferential treatment of apparel products imported from DR-CAFTA countries encourages use of U.S. and other DR-CAFTA country fabric; indeed, providing these kinds of incentives for the Central American countries to use U.S. textiles – or, at least to limit competition among the DR-CAFTA countries – was a major factor in obtaining Congressional approval of the Agreement. The impact is to

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5 Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, Pub. L. 109-53, 119 Stat. 462, 19 U.S.C. 4001 et seq.

increase prices of the fabric inputs, since only fabric from certain countries can be used.

Fortunately, the Department's own policy on selection of surrogate countries would result in rejection of the countries NCTO recommends be considered. DOC does not compare an NME country's per capita gross national income (GNI) on a purchase price parity (PPP) basis with other countries, as NCTO seems to think; rather, DOC compares the NME country's unadjusted per capita GNI, and *throws out* of the comparison any country whose per capita GNI is 50 percent less than or greater than the NME country's per capita GNI. Using 2005 figures (which is the most recent year for which the relevant World Bank data are currently available), this results in rejecting both Honduras and Dominican Republic, as they would not meet the Department's standard for economic comparability.[6] As shown in Attachment 1, the countries that would fall within DOC's grouping, in terms of both economic and product comparability, include countries like Bangladesh, India, and Pakistan, all of which the Department has considered as surrogate country options in previous investigations and reviews involving Vietnam.[7]

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6 Economic comparability is the first criterion considered by the Department under Policy Bulletin Number: 04.1: "Non-Market Economy Surrogate Country Selection Process" (March 1, 2004). This is followed by an analysis of whether the country is a "significant producer" of "comparable merchandise" and whether data on values for raw material inputs are readily available.

7 See, e.g., Memorandum to Jim Doyle from Ron Lorentzen Responding to Request for List of Surrogate Countries, Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (A-552-802), dated June 20, 2006.

Furthermore, the notion, as NCTO argues, that certain Central American and Caribbean countries "more closely approximate Vietnam in size, structure and make-up of their apparel exports to the United States" is so demonstrably wrong and/or simplistic that the Department must see through their ruse. Vietnam may be similar in some respects to these countries, but it is far more similar to multiple Asian countries that have been deemed appropriate surrogates in past cases. Again, as shown in Attachment 1, Bangladesh, India, and Pakistan each represent good choices for surrogate country data covering products shipped to the United States by Vietnam. In addition to meeting the economic comparability standard DOC uses, they also are very similar to Vietnam in terms of the value of apparel trade with the United States (each more than $1 billion) and in terms of the kinds of products they produce and export.

Concerning the impact of Chinese inputs in the manufacture of apparel products throughout Asia, given China's size, this would be a concern with nearly any product produced in Asia. As such, NCTO is effectively suggesting that Asian countries should never be used as a surrogate country because of the fear that they might be infected by Chinese values. We assume the Department is not interested in such a significant adjustment to its policies.

In any event, it is far too early at this point to say which country is really more similar when the Department does not know which products

should be monitored and what the production processes are for those products. This is why the Department has put off for now the selection of proxy countries. Hence, while we object to the U.S. textile industry's proposal to use Honduras or the Dominican Republic as a proxy, we are also not yet in a position to choose a specific country for any specific product groupings. We merely offer the general analysis above to begin to narrow the field to a list of countries most likely to be used by the Department in accordance with its normal practice.

V. PRODUCTION TEMPLATES

The Department indicates in its recent notice that it intends to develop production templates "on an as-needed basis, as merited by the Department's analysis of the monitored imports, and their impact on, and relation to, the domestic industry." We agree that it is premature to develop such templates before we even know what products might be targeted.

That being said, we are also concerned that the Department leaves open ended the manner in which it will collect such information, as it merely says it will "gather input from parties knowledgeable about the production process." We don't know who this means, nor whether we will have another opportunity to provide such information. Indeed, this seemingly hide-the-ball approach to the templates appears inconsistent with the Department's stated desire to maintain an open dialogue regarding the program.

We recommend that the Department first explain exactly what it means when it refers to "production templates" so that interested parties can

supply the Department with useful information on the subject. To our knowledge, such nomenclature is not used in the U.S. statute, so it is unclear what is needed. If what the Department wants is estimated factors of production on a product-specific basis, to which surrogate values would then be applied, KITA and KAIA can help develop this information. But, again, unless the Department specifies the products it intends to monitor in detail, creation of product-specific factors of production would be an incredibly time consuming and wasteful exercise.

VI. THE DEPARTMENT MUST UNDERTAKE ALL FORMS OF OUTREACH

KITA and KAIA appreciate the Department's promise to maintain an open dialogue on the monitoring program throughout the life of the program, and have provided email addresses through the email hotline so as to ensure notification to the appropriate parties. We also look forward to participation in any hearings the Department holds. Such transparency in the manner by which the Department implements the program is critical – though certainly not a panacea. Even a transparent program can chill trade, so we urge the Department to heed the other issues addressed in these comments.

We also encourage the Department to reach out to the U.S. apparel industry in order to discern not only the existence of U.S. production that competes with Vietnamese product, but also to determine their level of interest in this program, if any. It is telling that NCTO, in its comments, encourages the Department not to base its monitoring program on the level of

interest it learns from the U.S. apparel industry. It claims that this will result in a bullying exercise by U.S. importers and retailers. The Department should see right through this farce. What this is really about is the strong-arming tactics of the U.S. textile industry, which is more interested in protecting its apparel operations in Latin American than it is in protecting the relatively few small high-end apparel producers in the United States.

VII. THE DEPARTMENT SHOULD BETTER DEFINE HOW IT WILL CONDUCT ITS BIANNUAL EVALUATION AND ENSURE TRANSPARENCY AND PREDICTABILITY

We are pleased to learn that the Department will undertake its analysis bi-annually, while making public on a monthly basis the import data it will use for such analysis. We remain concerned about many aspects of this evaluation process.

First, it is not clear what time period the Department will be considering in its biannual analysis. Comparing imports from one six-month period to imports from another six-month period is certainly not a sufficient way to conduct the analysis, not only because of seasonality concerns (to which the Department says it is now sensitive), but also because any trends analysis for purposes of determining injury must be conducted over a longer period of time in order to assess whether injury is, in fact, caused by imports from Vietnam or elsewhere. The Department must announce what time period it will be considering to undertake this analysis.

Second, the Department says in its recent notice that it will also "consider domestic industry information including production, employment and other indicators of industry health, to the extent relevant to the biannual evaluation process." However, the Department has not made clear what sources it will use for the domestic industry aspect of its analysis, and how and when those sources and data will be made available to the public. It is not sufficient for the Department to make only the import trend analysis available to the public; indeed, we can already perform this analysis on our own if we have to. More critical to know is how the Department intends to define and analyze the relevant domestic industry. Only by doing this will the Department's program truly be transparent and predictable.

Third, despite our comments on the issue, the Department says nothing in its recent notice about whether it will even consider the impact of other causes when performing the injury analysis required under the statute to justify self-initiation. This is perhaps the most critical of all issues for the Department to analyze, particularly in a market dominated by so many other players and factors that can be driving pricing and, in turn, the health of a domestic industry. The Department must announce that this is a part of its biannual evaluation and explain what data it will consider in evaluating the issue.[8]

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[8] As mentioned in our previous comments: "Before initiating an investigation of imports from Vietnam, the Department must undertake an analysis of the effects of other causes, including the effects of other imports. It is not sufficient evidence to find that imports from Vietnam increased, their prices decreased, and the domestic industry (if there is one) is

Fourth, the Department says nothing about the manner in which the data it eventually collects relevant to the calculation of estimated normal value (i.e., production templates and surrogate countries) will be incorporated into its biannual evaluation and made available to the public. Like the domestic industry analysis, this too must be made available in order to promote transparency and predictability. Failure to do this will result in an assumption that the Department's program is a black box, which serves to chill trade unfairly and unnecessarily.

VIII. OTHER PROCEDURAL AND SUBSTANTIVE SAFEGUARDS

Although the Department has adopted some of the safeguards we and others encouraged in our first set of comments, many of our suggestions went unheeded. As we stated before, given that the decision to undertake an import monitoring and self-initiated AD program was part of a "political" deal, it is important to ensure that actual decisions on program implementation and, in particular, self-initiation are not part of the political process but based on facts, objective analysis of the facts, and neutral deliberation and decision-making.

A. Procedural Safeguards

One of our proposals for procedural safeguards was for the Department to adopt a neutral decision-making process with respect to any initiation. We

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suffering. It may be the case that other factors are contributing to the industry's poor performance, notwithstanding the growth in lower priced imports from Vietnam. Not only might other countries be more to blame; Vietnamese product may be merely displacing product from other countries." KITA/KAIA Comments, page 13.

recommended, and still urge, that any such decision be reviewed by disinterested parties prior to the initiation itself, possibly utilizing the existing roster of NAFTA panelists that would review the sufficiency of the evidence and objectively determine whether the requirements of U.S. law are met and self-initiation is warranted. We also suggest that an opportunity for notice and comment be provided to all parties prior to any decision to self-initiate an investigation. In essence, Import Administration would provide the public with the evidence it believes justifies initiation and allow interested parties to comment on both the accuracy of the information and its sufficiency. Based on the comments received, Import Administration staff could then prepare a recommendation for the Assistant Secretary for Import Administration and a decision could be taken.

Given the extraordinary nature of a proposed monitoring/self-initiation program and the fact that the decision to even consider self-initiation is solely within the control of Import Administration, due care should also be exercised in maintaining an open dialogue with the Government of Vietnam and providing the Government an opportunity to examine the basis of any decision to self-initiate an investigation.

To accomplish this purpose, we would propose that a consultation process be built into any monitoring/self-initiation system to ensure the transparency of the process, to allow the Government of Vietnam to address problem products before self-initiation, and to ensure that decisions to

initiate are not made using a different standard than is applicable to all other WTO Members.

B. Substantive Safeguards

We have addressed above some of the substantive safeguard issues addressed in our original comments, particularly with regard to how injury will be analyzed in the Department's annual review. However, despite multiple questions posed in our original comments, the Department has given no hint of how it intends to address some of the more difficult issues presented under the U.S. antidumping law concerning how to calculate export price and normal value when the companies who are the apparent targets of the law neither own the product they ship nor set the price for that product. There is only limited precedent under U.S. law for these kinds of situations, and we think it critical for the Department to announce how it intends to treat these issues. After all, if the intent of the antidumping law is to prevent dumping, companies must know in advance how the Department is going to calculate their margins. This involves more than merely announcing things like "production templates" and surrogate values, which would presumably be used to determine normal value so one can, in turn, adjust U.S. prices accordingly. It also involves knowing whose U.S. prices will be considered and from whom the factors of production (against which the surrogate values will be applied) will ultimately be obtained.

We urge the Department to consider the comments submitted on these issues in our response to the original invitation for comments.[9] Given that they were not even acknowledged in the Department's latest notice, we restate them again below.

1. Export Price Considerations

Virtually all sales to the United States of apparel products produced by Korean-owned facilities in Vietnam are performed under tolling arrangements known in the trade as CMT arrangements (for "cut, make, and trim"). The Vietnamese operation does not own the fabric from which the apparel product is made. Rather, their Korean parent arranges for delivery of the product to the Vietnamese facility. The Vietnamese facility makes the apparel product and then ships the product wherever the parent instructs. Finally, the invoice to the U.S. customer comes from the Korean parent. We believe that a substantial majority of all apparel exports from Vietnam, not just those of Korean invested companies, are produced through CMT arrangements.

The Vietnamese companies therefore merely sell their service, not the product. They have no direct interaction with the final U.S. customer, at least in terms of setting price. And their costs are limited to their labor and overhead expenses. (As we understand it, this occurs as between non-affiliates as well, where the Vietnamese producer acts as a toller and is instructed by its customer where to obtain its raw material and where to ship

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9 KITA/KAIA Comments, pages 15-17.

it, with the actual U.S. sale occurring between a foreign trading company and the U.S. customer.)

In order to be fully transparent and predictable, the Department must announce how it will calculate the dumping margin in this kind of situation. With regard to U.S. price, it must decide which transaction will be used. The same must be decided for companies that perform the same task, but through non-affiliates rather than affiliates. If it will be the price at which the parent or unaffiliated trading company sells to the United States, then the Department must announce this.

As between affiliated companies, this would make sense, but it needs to be clear. Meanwhile, if the company that sells the merchandise to the United States is unaffiliated with the Vietnamese company that produces the apparel product, the Department must decide which company is the respondent. Although the producer of the product is in Vietnam, this company plays no role in pricing the product; furthermore, in CMT situations, the Vietnamese producer has no control over the sourcing of the raw material. The respondent in this situation must be the unaffiliated trading company, regardless of where that company is situated.

2. Normal Value Considerations

The situation described above poses similarly complicated questions on the normal value side of the equation. With no purchases of raw materials and, in turn, no ownership of such materials, it is unclear what transactions

and costs would be used for the normal value calculation. This is relevant to the production template the Department proposes to develop.

Furthermore, for companies who do own their raw materials, it is also unclear under the NME methodology how the Department would calculate normal value. This is true not merely because of the surrogate value methodology used in NME cases, but also because companies are using a combination of market economy and non-market economy inputs. Currently, the Department's standard on market economy purchase inputs is not clear. While, for surrogate value purposes it rejects certain countries, it is unclear whether these same countries will be rejected for purposes of purchased textile inputs. Recent court decisions indicate that the specific industry providing the inputs from the market economy cannot be rejected unless there is clear evidence that those inputs have been subsidized.[10] The Department should follow the court decisions in this regard.

We recommend that the Department announce, in advance, how it will calculate normal value given the various scenarios under which Vietnamese operations conduct their businesses. Specifically:

- In CMT situations, where the Vietnamese facility has no knowledge of the cost or the factors of production for the raw material, what will be used to calculate normal value? We assume this information would need to be obtained from the owner of the raw material, but the Department must make this clear, in advance, rather than later penalizing the Vietnamese producer for not being able to report information to which is has no access.

[10] See, e.g., *Sichuan Changhong Electric Co., Ltd., et al. v. United States*, slip op. 06-141 (September 14, 2006), 26-28 (citing *Fuyao I* and *Fuyao II* decisions).

- If a surrogate value will need to be used, the Department must announce (a) which country will be used and (b) what sources it will rely upon for surrogate values in deciding whether to initiate an investigation.

For each of these, it is important that the Department establish clear rules that it will use both in deciding whether to initiate an investigation, as well as in conducting the investigation if and when it is initiated. These rules cannot be adopted, however, before the Department decides which specific products will be monitored, at which point the Department should seek further comment on the most appropriate standards, countries, and sources to be used for calculating normal value.

CONCLUSION

KITA/KAIA remains of the view that the Department's monitoring program is fundamentally flawed. Ideally, it should be scrapped in favor of either nothing at all or a multilateral program. If there is to be a monitoring program, whether applied to Vietnam specifically or to all countries, the Department has much additional work to do to prevent needless chilling of trade and to ensure transparency and predictability. Among our chief concerns is the narrowing of the product scope based on an evaluation of U.S. production. The burden should be on the domestic industry to demonstrate that it is producing – in the United States, not elsewhere -- products "like" those that it is suggesting should be monitored. Similarly, the domestic industry that is producing products "like" those being suggested for

monitoring should indicate whether or not it supports the monitoring program.

Once such products are identified, then appropriate surrogate countries and production templates can be developed to help calculate normal value for the NME normal value calculation. With respect to surrogate countries, the Department must follow its current practice, and not adopt new result-oriented approaches proposed by the U.S. textile industry.

Critically important to the proper administration of any monitoring program will be institution of a consultative process that ensures proper notice and comment before any investigations are initiated, and full transparency with regard to the data being considered and methodologies used in making such decisions.

ATTACHMENT 1
SURROGATE COUNTRY SELECTION ANALYSIS

Country	2005 GNI per Capita, USD*	Total Apparel Exports to U.S., YE Nov 2006, USD**	Total Exports to the U.S., YE Nov 2006, USD***	Apparel % of Total Exports to U.S., YE Nov 2006, USD	Top Apparel Exports**
Vietnam					
Vietnam	$ 620	$ 3,254,477,484.00	$ 8,299,450,238.00	39%	1. Trousers
					2. Coats
					3. Knit Shirts
					4. Swimwear
					5. Dressing Gowns and Night
					6. Woven Shirts
					7. Dresses
					8. Underwear
					9. Skirts
					10. Sweaters
Top Four Potential Surrogate Countries					
India	$ 720	$ 3,176,551,665.00	$ 21,464,144,434.00	15%	1. Woven Shirts
					2. Knit Shirts
	(+16%)				3. Dressing Gowns and Night
					4. Cotton Yarns
					5. Underwear
					6. Trousers
					7. Skirts
					8. Dresses
					9. Swimwear
					10. Coats
Bangladesh	$ 470	$ 2,895,474,329.00	$ 3,255,176,681.00	89%	1. Trousers
					2. Woven Shirts
	(-24%)				3. Underwear
					4. Swimwear
					5. Dressing Gowns and Night
					6. Coats
					7. Knit Shirts
					8. Sweaters
					9. Skirts
					10. Dresses
Cambodia	$ 380	$ 2,123,384,037.00	$ 2,183,326,641.00	97%	1. Dressing Gowns and Night
					2. Trousers
	(-39%)				3. Knit Shirts
					4. Swimwear
					5. Underwear
					6. Coats
					7. Woven Shirts
					8. Skirts
					9. Dresses
					10. Sweaters
Pakistan	$ 690	$ 1,396,226,847.00	$ 3,655,155,800.00	38%	1. Cotton Yarns
					2. Knit Shirts
	(+11%)				3. Swimwear
					4. Trousers
					5. Dressing Gowns and Night
					6. Coats
					7. Underwear
					8. Woven Shirts
					9. Gloves & Mittens
					10. Dresses
Countries That Would be Rejected Under Current DOC Practice					
Dominican Republic	$ 2,370	$ 1,573,486,471.00	$ 4,565,030,575.00	34%	1. Underwear
					2. Trousers
	(+282%)				3. Swimwear
					4. Knit Shirts
					5. Woven Shirts
					6. Dressing Gowns and Night
					7. Brassieres
					8. Coats
					9. Dresses
					10. Skirts
Honduras	$ 1,190	$ 2,463,550,464.00	$ 3,755,280,750.00	66%	1. Knit Shirts
					2. Underwear
	(+92%)				3. Trousers
					4. Woven Shirts
					5. Swimwear
					6. Coats
					7. Brassieres
					8. Dressing Gowns and Night
					9. Dresses
					10. Gloves & Mittens

* World Bank World Development Report
** OTEXA
*** USITC