USA ITA

UNITED STATES ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL

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

Re: Second Round Comments on Import Monitoring Program on Textile and Apparel Products from Vietnam, 72 Fed. Reg. 2860 (January 23, 2007)

Dear Assistant Secretary Spooner:

On behalf of the member companies, the U.S. Association of Importers of Textiles and Apparel, USA-ITA, hereby responds to the January 23 Federal Register notice providing an additional opportunity for comment on the appropriate actions by the Department of Commerce to develop and implement a monitoring program covering U.S. imports of apparel from Vietnam. That notice, advising that the monitoring program is already in effect, raises far more concerns for the U.S. importing and retailing community than it resolves. Of particular concern to U.S. importing and retailing companies is the language included in the Federal Register notice that reflects the fact that officials in the Department of Commerce believe they do not understand the composition and structure of the domestic apparel industry.

USA-ITA has more than two hundred member companies, including manufacturers, distributors, retailers, importers and related service providers, such as shipping lines and customs brokers. The member companies source textile and apparel products from around the world, including Vietnam, and therefore are extremely knowledgeable about the apparel industry, in the United States and overseas.

Summary of Comments:

1. After more than forty years managing a comprehensive textile and apparel quota program, the Department should have a full understanding of the composition and structure of the domestic apparel industry.

2. USA-ITA calls on the Department to first determine whether there are U.S. producers of apparel that is like the apparel imported from Vietnam, and then to confirm that those U.S. producers are prepared to support an anti-dumping investigation. In the absence of a U.S. apparel industry, there is no basis to conduct monitoring.

3. Noticeably missing from the comments submitted on December 27 are any statements in support of monitoring by U.S. APPAREL manufacturers. This underscores the basic fact that there is no substantial support from the U.S. companies that manufacture apparel for retail sale.

4. The Import Monitoring Program is already having an impact on apparel sourcing decisions.

5. Out-dated allegations of subsidies do not legitimize either the monitoring program or the self-initiation of antidumping investigations.

6. The Department has yet to identify a legal basis for its far-reaching and discriminatory system of monitoring apparel made in Vietnam for a two year period.

Discussion

1. After 40 Years, The Department Should Know The U.S. Textile and Apparel Industries

USA-ITA is greatly concerned by the Department's assertion that even though it recognizes that the five apparel groups identified in the September 28 letters from Secretary Gutierrez and Ambassador Schwab to Senators Elizabeth Dole and Lindsey Graham are "too broad for effective monitoring," the Department will not reign in this unwieldy program from the outset. As justification, the Department says it first needs to "broaden its understanding of the composition and structure of the domestic textile and apparel industry." If the Department does not know who the U.S. apparel producers are, the Department cannot know what they make and therefore what products to monitor.

The Department, which for more than thirty five years has formally served as the chairman of the Committee for the Implementation of Textile Agreements[1] and which houses within its Import Administration a fully staffed Office of Textiles and Apparel (OTEXA), has no credible basis to claim that it does not know or understand the U.S. apparel industry. The plea for more time to learn about the U.S. apparel industry could only be interpreted as a stall tactic since officials in OTEXA regularly collect and maintain information about U.S. production of apparel, U.S. exports of apparel and U.S. imports of apparel.

Based on the information available to the public from OTEXA, it appears that the Department already knows that there is no U.S. apparel industry seeking monitoring or claiming that imports from Vietnam are unfairly traded. The support for this APPAREL monitoring program, and for self-initiated antidumping actions against Vietnam, comes solely from the U.S. textile industry, composed of yarn spinners and fabric makers, but they are irrelevant to this process. Because the monitoring program is solely aimed at U.S. imports of APPAREL from Vietnam, the appropriate analysis of the U.S. domestic industry should focus solely on APPAREL production in the United

[1] Executive Order 11651, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. Section 1854), 37 Fed. Reg. 521 (January 13, 1972), formally established CITA, but the U.S. textile quota program, the textile office within the Commerce Department, and the inter-agency process were already in place before that.

States. Analysis of the U.S. textile industry would be appropriate only if the special monitoring program targeted U.S. imports of textile products, which it does not.

The fact is that many apparel producers in the United States did use the Multifiber Arrangement, and particularly the Agreement on Textiles and Clothing (ATC), with its ten year back-end loaded quota phaseout process, to restructure and face the realities of becoming globally competitive. Indeed, that is the lesson of the U.S. International Trade Commission study that is cited by representatives of the U.S. textile industry in the earlier comments. That report, Industry & Trade Summary – Apparel, USITC Pub. No. 3169 (March 1999), analyzed the period just before and just after the ATC came into force in 1995, and highlights how apparel companies were refocusing their attention on marketing and on global sourcing in anticipation of the application of normal trading rules to their businesses.

The January 23 notice specifically calls for input from "parties knowledgeable about the [textile or apparel] production process." USA-ITA and our member companies will continue to work with the Department to provide additional information about commercial apparel sourcing and production operations internationally. But our discussion with USA-ITA member companies and their sourcing decision-makers reveal that there is a very limited amount of apparel that is produced in the United States for sale to the public.

USA-ITA notes that if the Department decides to hold further hearings, as part of its quest to learn about the U.S. APPAREL industry, it must be sure that any such hearings are held where U.S. APPAREL producers are located, and that the issue of apparel is addressed by apparel makers, not by yarn and fabric makers. The Department's hearing process should focus solely on gathering public comments from the affected parties.

2. There is No Basis For Monitoring Until A U.S. Apparel Industry Is Identified

The Department continues to focus on implementing a comprehensive monitoring program without considering whether there is a U.S. industry that could properly benefit from a self-initiated antidumping investigation. Thus, in its latest notice, the Department appears to indicate that it will conduct a "like product analysis" as part of the biannual evaluation, <u>after</u> the Department "extends its knowledge of the domestic industry and the products it produces." In the meanwhile, the Department is monitoring a large swath of apparel products imported from Vietnam.

Conducting a like product analysis – that is, determining whether there are in fact any U.S. producers of products like those imported from Vietnam – must be the <u>first</u> step in the process, not one of the last steps. As the Department certainly must realize, first they must identify whether there are U.S. producers of like products: that is, U.S. apparel manufacturers producing for the commercial market -- not under the Berry Amendment or for the protected government procurement market -- with the production capabilities necessary to meet the orders placed by importers and retailers who must fill shelves in stores across the country. It is essential that this review focuses on the manufacturing of finished garments, since that is what U.S. retailers and importers purchase in Vietnam. This does not include the production of cut pieces of apparel that are intended to be assembled offshore.

Then the Department needs to confirm that those U.S. producers are supportive of monitoring and therefore committed to providing the data necessary to determine whether there is material injury by reason of imports from Vietnam. Without that information, this Import Monitoring Program will merely divert resources from the Commerce Department and from the industry without any benefit. The proper starting point also would allow the Department to focus attention on those products that represent important U.S. manufacturing operations. Further, it would permit U.S. retailers and importers to make better informed decisions about future sourcing.

3. The Absence of Comments By Apparel Makers In Support of Monitoring Establishes That There Is No Basis for Monitoring of Apparel

The Department must not delay acknowledging that "the emperor has no clothes." The very fact that, of 20 submissions filed in response to the Department's first request for comments, there was not one letter from a major U.S. apparel producer or association representing a substantial number of apparel producers supporting monitoring says it all. There is no U.S. apparel industry either seeking or supporting import monitoring or self-initiation of antidumping investigations against apparel made in Vietnam.

The time for the Department to state definitively that it is not monitoring apparel products is now, not six months, or a year or two years from now. By that time responsible U.S. retailing and importing companies will have been forced to abandon factories that have done nothing wrong, other than fall in the path of a political commitment.

4. The Import Monitoring Program Is Already Having An Impact On Apparel Sourcing Decisions

Claims that monitoring is innocuous and that only "illegitimate trade" will be inhibited by the monitoring are disingenuous. So long as the Department is unwilling to take meaningful and necessary steps to limit the scope of products it monitors, it is inhibiting trade, period.

Business leaders and managers acting in the best interests of their companies will seek to avoid unnecessary risks, including the increased and unpredictable costs created by an increased potential for future antidumping duties. In fact, a number of USA-ITA member companies are taking a conservative approach in planning their 2007 orders, particularly in light of the commitments to self-initiate antidumping cases that appear in the September 28, 2006, letters signed by Secretary Guttierez and Ambassador Schwab.

The additional information provided in the Department's January 23 Federal Register notice provides no basis for responsible companies to believe that the Department will narrow the range of threats to the certainty essential to their businesses. To the contrary, by refusing to limit monitoring to imports from state-owned enterprises, the stated targets of the supposed concern about subsidized trade, and indicating that the list of products subject to monitoring is not "static," the Department exposes ***all*** apparel imports from Vietnam to the threat of a self-initiated antidumping investigation, introducing uncertainty for ***any*** future imports from Vietnam. The result of the information provided to the public thus far, therefore, is clearly to inhibit legitimate trade.

5. Allegations of Subsidies Do Not Legitimize the Monitoring Program or Self-Initiated Antidumping Cases

Following a review of the comments filed with the Department, as well as other statements reported in the press, it appears that the entire basis for the U.S. textile industry's demand for protection is supposedly the textiles subsidies that exist in Vietnam. Yet, as the Department knows, the prohibited subsidies in the textile sector were eliminated by the Government of Vietnam even before Vietnam acceded to the World Trade Organization. The accession protocol negotiated between the United States and Vietnam even includes a special provision that allows the United States to reimpose quotas if the prohibited subsidies remain in effect.

This only reinforces the fact that, if the eliminated subsidies are the supposed basis of the U.S. textile industry's assertion that imports from Vietnam must be monitored because they are unfairly traded, then there is no basis for the Department to create a monitoring program.

There is even no basis for claiming dumping. The official U.S. government trade statistics available on the OTEXA website show that Vietnam is not one of the largest suppliers of apparel to the U.S. market, and also is not one of the low cost suppliers of the apparel items covered by the five targeted groups of products.

6. The Legal Basis for the Monitoring Program Remains Unproven

Conspicuously absent from the Department's January 23 notice is any response to the question of the legal authority of the Department to implement the monitoring program. In our earlier comments, USA-ITA and others identified for the Department their very grave concerns that the program does not conform to the terms of U.S. law providing the authority for monitoring. We noted that the law only permits monitoring in explicitly identified, limited circumstances, namely where there a pre-existing antidumping order in place covering a like product from another supplier, or where there is an antidumping order in place covering a downstream product. And, in any event, monitoring is authorized for no longer than one year, not the two years described in the Federal Register notice. The Department was asked to respond and to take action to withdraw its plans if it could not justify the program under the law. Not responding to this serious issue is not an option for the Department.

Conclusions

We call upon the Department to act now to curtail the threat created to legitimate business through the announcement of the import monitoring program against Vietnamese-made apparel. While the Department follows through to learn more about the apparel industry it has worked with (and on behalf of) for decades, the Department should acknowledge that it lacks legal authority to conduct the monitoring program and end this damaging exercise.

If the Department persists with the program, it must move promptly, before further sourcing commitments are made by U.S. importers and retailers, to identify what U.S. production actually exists. Monitoring of specific apparel imports produced by state-owned enterprises must be conditioned on the identification of U.S. apparel producers (for the commercial market) of like products committed to providing data on their economic condition. The Department also must provide

the certainty that once a set group of products (if any) is identified for monitoring, that list can only be contracted and not expanded.

Respectfully submitted,

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Executive Director