January 31, 2007

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

Via Email

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

Dear Assistant Secretary Spooner:

On behalf of the undersigned companies and associations, this letter responds to the Second Request for Public Comment on the Import Monitoring Program of Textile and Apparel Products from Vietnam ("Import Monitoring Program"). In its second request, the Department of Commerce ("Department") announced that the Import Monitoring Program began on January 11, 2007, when Vietnam's accession to the World Trade Organization ("WTO") entered into force, and provided an outline of "the basic principles of the monitoring system." The Department requests comments on that outline and responses to comments previously received by the Department as part of its December 4, 2006 request for comments.

The undersigned importers and retailers submitted detailed comments on the Department's monitoring program on December 27, 2006. Those comments continue to be relevant to the manner in which the Department will fully implement its monitoring program and we respectfully request that the Department continue to take those comments into account as the program is implemented. We appreciate the Department's recognition that the five groups of products identified in the September 28, 2006 letters to Senators Dole and Graham are too broad, that it is premature to develop "production templates" or identify "proxy countries," and that

more frequent reviews are not anticipated.[1] Nevertheless, the program as established is discriminatory, unjustifiably placing at risk virtually all textile and apparel trade from Vietnam.

Although the Department has outlined certain aspects of the program, explained in greater detail below, the U.S. importing and retailing community remains concerned that the Department has 1) yet to identify the legal basis for the established monitoring program and 2) has put in place a "temporary textile and apparel import monitoring system"[2] for imports from Vietnam without first limiting the scope of the monitoring to imports from Vietnam for which there is a domestic industry in the United States that produces a like product, seeks and supports monitoring, and is prepared to provide data relevant to an injury assessment.

I. The Department Must Identify the Legal Basis for the Monitoring Program

The Department's second request for comments makes no mention of a key point raised by the U.S. importing and retailing community in its December 27, 2006, submission: the clear absence of statutory authority to conduct import monitoring where 1) there is no antidumping order already in effect with respect to that class or kind of merchandise from one or more other countries; 2) there is no antidumping order already in effect with respect to upstream merchandise; and 3) the monitoring is contemplated for a period in excess of one year. The Department's general authority to administer the antidumping laws or to self-initiate antidumping investigations cannot be read so broadly as to render meaningless the specific and circumscribed grants of monitoring authority conferred elsewhere in the statute. This issue cannot be disregarded: the Department must explain its legal authority for the establishment of its import monitoring program, and if it cannot, it must abandon the program.

[1] We reserve the right to comment at the appropriate time on the suggestions submitted by NCTO and AMTAC regarding surrogate countries.

[2] Commerce Department "Fact Sheet" on Commerce Textile and Apparel Monitoring System Outline, posted at http://ia.ita.doc.gov/ia-highlights-and-news.html.

In this regard, the Department's statements in its January 23 Federal Register notice that the "program, which is not meant to inhibit legitimate trade, will supplement those monitoring activities already undertaken" by OTEXA and "help ensure compliance with trade remedy laws"[3] are extremely troubling. The premise of those statements—that some trade is "legitimate" and other current trade is somehow "not legitimate" and may be "inhibited" by this program – is utterly incorrect. There is no basis for the Department to assume that any trade in textile and apparel products from Vietnam is other than "legitimate" (a term which has no meaning under the antidumping laws) and, in any event, the monitoring program is negatively impacting all Vietnam textile trade. Moreover, the notion that this unprecedented monitoring program will "help ensure compliance with the trade remedy laws" is also stunning in its presumption. The trade remedy laws provide precisely that—remedies for proven unfair trade practices. Those remedies are extraordinary measures imposed only after detailed and careful investigations. The notion that some type of enforcement or "compliance" measures can be instituted when there has never been an invocation of the detailed process or any finding of unfair trade requiring the implementation of remedies is a clear indication of the extent to which the Department's program is outside of both U.S. law and specific measures authorized under WTO agreements to address unfair trade practices.

II. Any Monitoring Must Be Based First Upon the Existence of A Domestic Industry Producing A Like Product and Supportive of Monitoring

The second request for comments indicates that products monitored at the three-digit textile category level will be based in part on "the composition of the U.S. industry" and that the product coverage will evolve in some unspecified manner as the Department "extends its

[3] 72 Fed. Reg. 2860 (January 23, 2007).

knowledge of the domestic industry and the products it produces."[4] The Department has not indicated, however, how it will ensure that the monitoring only applies to products which could even conceivably be subject to antidumping actions, *i.e.*, products produced by domestic industry. The undersigned companies and associations have provided detailed comments as to the manner in which this key component of the monitoring program should be carried out. We urge the Department, early in the process, to require domestic producers desiring monitoring to come forward with information concerning their own production and the specific products they wish to have monitored and to certify their willingness to provide injury data. Other interested parties must have the opportunity to respond to this information.

Suggestions by the associations representing U.S. textile manufacturers that requiring producers of like products to first identify themselves and state their interest in monitoring and willingness to supply necessary data constitute "bullying"[5] are empty rhetoric. The need for the producers who will benefit from the monitoring program to provide this basic, key data allowing a correlation between domestic production and imports is clear, and certainly cannot be considered unduly burdensome given the extraordinary benefit being provided.

The five groups of "sensitive" products (shirts, trousers, sweaters, swimwear and underwear) encompass at least 28 different three-digit textile quota categories, each of which includes many different classifications under the Harmonized Tariff Schedules of the United States (HTS). In its notice, the Department states 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." In addition, the

[4] Id. at 2861.
[5] Comments of NCTO, dated December 27, 2006, at 4.

Department states its intention to look at "selected products" within those categories on an HTS code basis.

We respectfully submit that the Department is starting from the wrong baseline. The correct basis for identifying which imported products should be within the scope of monitoring and then possibly subject to review is 1) an identification of the producers of products in the United States, 2) the products, if any, that they are interested in having monitored, and 3) whether they are prepared to supply data necessary to indicate industry health. The Department's assurances that it will act in a manner consistent with U.S. law and with the applicable WTO rules should mean that these prerequisites will not be disregarded.

The assertions by NCTO of intimidation by retailers suggest an attempt to hide, for as long as possible, the fact that what NCTO seeks through monitoring is not to protect any U.S. apparel-making industry but rather to protect its market for U.S. yarns and fabrics in Central America, Mexico, and the Caribbean. Indeed, it is extremely telling that NCTO cites a 1999 study by the U.S. International Trade Commission to explain the absence of support from the U.S. apparel industry, on the ground that it is highly "fragmented" with over 60 percent of establishments then having fewer than 20 workers and only ten percent employing 100 or more workers.[6] As the Department is aware, the fact that a U.S. industry has many small producers does not prevent it from invoking the antidumping laws when it believes it faces unfair trade. Consider, for example, the investigations of live cattle from Canada, certain frozen and canned warmwater shrimp from Brazil, Ecuador, India and Thailand, and honey from the People's Republic of China, to name a few. Moreover, the study cited by NCTO, covering the period 1993 through 1997, certainly overstates the number and size of apparel-making facilities in the United States today, and highlights exactly why many U.S. importers and large retailers, who

[6] U.S. International Trade Commission Industry & Trade Summary: Apparel, Pub. No. 3169 (March 1999).

must place orders for sufficient quantities to fill stores across the country, cannot, as a rule, rely principally upon U.S. apparel factories. The U.S. apparel-making facilities, located now as then primarily in New York and California, serve only niche segments of the apparel markets, and produce relatively small quantities. We again strongly urge the Department to determine early in the process who the domestic apparel producers are, what products they seek to have monitored and whether they will provide data relevant to an injury analysis.

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For all these reasons, we respectfully urge the Department to reconsider its basis for setting the scope of the monitoring program, assuming it has legal authority to implement the monitoring program.

Respectfully submitted,

U.S. Association of Importers of Textiles and Apparel
National Retail Federation
American Apparel and Footwear Association
Retail Industry Leaders Association
Travel Goods Association
American Import Shippers Association
Liz Claiborne, Inc.
Polo Ralph Lauren
Gap, Inc.
J.C. Penney Corporation, Inc.
and J.C. Penney Purchasing Corp.
Nike, Inc.
Federated Department Stores
Perry Ellis International
Kohl's Department Stores Inc.
The Children's Place
Ann Taylor Inc.
Paul Davril, Inc.
The Levy Group
Eddie Bauer, Inc.
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