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### **By Facsimile and Email**

May 24, 2002

Mr. David Kavanaugh  
Ways and Means Trade Sub-committee  
1104 Longworth Office Bldg.  
Washington, DC 20515

Re: Relief from Improperly Collected Trade Dispute Duties

Dear Mr. Kavanaugh:

This letter is being submitted at the request of Mr. Howard Diamond of Congressman Ackerman's office to provide the staff of the Ways and Means Trade sub-Committee with an explanation of H.R. 4237 a bill recently submitted by Mr. Ackerman.

The purpose of the bill is to return certain duties that were improperly collected in connection with the U.S. trade action against the European Union banana regime. The bill was filed on behalf of Marchon Eyewear, Inc. (and its related importing company, Rothandberg, Inc.) ("Marchon"). Marchon is a U.S. importer and distributor of fashion eyewear, with its U.S. headquarters located at 35 Hub Drive, Melville, New York.

As the trade staff is well aware, following the failure by the European Union to implement by January 1, 1999 the WTO recommendations to modify its banana import regime, the United States imposed retaliatory measures. These measures were in the form of additional duties on a series of unrelated imported products originating from Europe, including eyewear cases classified under US tariff subheading 4202.32.10, HTSUS, a product imported by Marchon. These 100% duties were imposed from March 3, 1999 to July 1, 2001. The EU challenged the right of the United States to impose duties prior to its receipt of authorization from the WTO. The WTO determined that the United States had in fact improperly imposed unilateral retaliation 6 weeks prior to obtaining the authorization of the WTO, which was only granted on April 19, 1999. The U.S. duties imposed during the period from March 6 to April 19, 1999 were thus found illegal under WTO law.

The United States Trade Representative at that time acknowledged that the United States "acted inconsistently with WTO rules when it changed import requirements for a period of six and one-half weeks last year [1999] before the WTO dispute proceedings had concluded...." USTR Press Release 00-54 (July 17, 2000). However, the USTR did not take any action to rectify the improper taking of funds during the six-week period for which the

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United States had no authorization. Consequently, the US Customs Service retained the proceeds of the duties collected during this period.

The improper additional duties imposed on the imports of eyewear cases during this period resulted in approximately \$ 250,000 in excess import duty cost by Marchon. Not only is there no valid reason for the government to retain these duties, which were imposed in violation of international trade rules, but it is particularly improper and ironic that a company that has long been a member of the greater New York business community and a New York area employer should continue to suffer the economic burden of this unauthorized exaction of money at a time when the government has pledged actions to assist New York area businesses, which are struggling to remain viable and to retain their employees despite the particularly difficult regional economy. Finally, Marchon has no recourse to the Court of International Trade or other Court to obtain a refund of these improperly collected duties.

Marchon fully respects and appreciates the U.S. Government's right to enforce the international trade laws. However, we suspect that under similar circumstances where the WTO finds that duties have been improperly collected against U.S. goods, the United States would request that any foreign Government that illegally collected the money return the funds. Otherwise, foreign governments will always be in a position to illegally exploit the WTO process as a means to impose duties to protect their domestic industries until a final WTO decision has been reached. The WTO process can last over a year, by which time U.S. producers will have lost considerable market share and suffered irreparable harm. Accepting as a standard the position that unauthorized duties need not be repaid, could set a costly and dangerous precedent that would harm U.S. producers in the years ahead.

Based on the above, we respectfully request favorable consideration of this bill. If you have any additional questions, please do not hesitate to contact the undersigned.

Sincerely,

Amy J. Johannesen

Mark P. Lunn