October 16, 2007

Mr. Matthew Priest
Chairman
Committee for the Implementation of Textile Agreements
Room H3 100
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Subj: Commercial Availability Request Under the North American Free Trade Agreement (NAFTA) for:

- **a) Cotton of Chapter 52,**
- **b) Man-Made Filaments, Strip and the Like of Man-Made Textile Materials of HTS Chapter 54,**
- **c) Man-Made Staple Fibers of HTS Chapter 55, and**
- **d) Wadding, Felt and Nonwovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof of HTS Chapter 56,**

All the Forgoing Containing Rayon Fiber (other than "Lyocell").

Dear Mr. Priest:

I write on behalf of the member companies of the National Textile Association, the oldest and largest trade association in the U.S. representing the domestic fabric-making industry of the United States. On behalf of the member companies of the National Textile Association who produce, in the United States, textile articles of rayon fibers, I respectfully request that the Committee for the Implementation of Textile Agreements (CITA) recommend a change to the NAFTA rule of origin for Harmonized Tariff Schedule chapters 52, 54, 55, and 56, and that, after consultations with Mexico and Canada, the President proclaim such change in accordance with 19 U.S.C. §3332(q)(3)(a) and Section 7(2) of Annex 300-B of the NAFTA. For the reasons described below, the change should be declared effective for entries on and after October 1, 2005, the date on which all rayon production ceased in the United States.

The specific changes requested would allow textile filaments, staple yarns, and woven fabrics of chapters 52, 54 and 55, and nonwoven and other textile articles of Chapter 56, to be considered originating goods under NAFTA without regard to the origin of any rayon fibers (other than rayon fiber composed of cellulose precipitated from an organic solution in which no substitution of the hydroxyl groups takes place and no chemical intermediates are formed and which is known by the generic description of "lyocell") contained in the product. The requested change is urgently necessary because on or about September 30, 2005, Liberty Fibers Corporation, the only producer of rayon in the United States, ceased all production. We are aware of no plans to restart manufacturing operations.

It is the further understanding of the National Textile Association, based on knowledge and experience in the marketplace, that there are no producers in Canada or Mexico supplying commercial quantities of rayon fibers (other than "lyocell") in a timely manner. We believe this understanding is supported by the experience of U.S. negotiators in consultations with Canada concerning filament yarns of viscose rayon and tri-lobal rayon staple fibers.

Our contention is that there is not now, nor has been for some time, nor likely to be in the foreseeable future, any North American production of rayon fiber (other than "lyocell"). Therefore we ask for changes to the rules of origin affecting the entirety of chapters 52, 54, 55, and 56 rather than specific tariff headings within those chapters. We frame our request as a global change to the chapter rules in order to cover all possible products of interest now as well as those that may be of interest to the industry in the future. We also adopt this approach because at the 6-digit Harmonized System classification level (nor indeed, even at the 8- or 10-digit HTSUS classification level) it is not always possible to distinguish the subject of the petition from other artificial fibers. We also believe that by so constructing our request we spare the Committee, and the corresponding bodies in our NAFTA partners, from revisiting the question of rayon fiber availability repeatedly as new specific request are made.

It is also our understanding that these changes, if implemented, would also permit textile, apparel, and made-up articles of chapters 57 through 63 which otherwise satisfy the NAFTA rules of origin to continue to qualify without regard to the origin of any rayon fiber present in the filament or spun yarns, woven fabrics, nonwovens, or other textile materials of chapters 52, 54, 55, and 56 used in the production of those fabrics, apparel articles, or made-up items.

I. Requested Procedural Actions

A. Expedited Action By All Means Available.

We are mindful of the statutory requirement that the consultation and layover process of 19 U.S.C. § 3313 be followed prior to the President's proclamation of a change in the NAFTA rule of origin for a textile product such as the subject nonwovens. See 19 U.S.C. § 3332(q)(3). However, the closure of Liberty Fibers Corp., and the resulting non-

availability of U.S. origin rayon fibers, poses an immediate threat to the competitiveness of domestic U.S. and NAFTA territory producers. Accordingly, we request expedited action by all means available.

The consultation and layover process requires, *inter alia*, that the advice of certain advisory committees and the International Trade Commission (ITC) be obtained. Based on the urgency of this request, for example, CITA could ask the United States Trade Representative ("USTR") to immediately solicit the advice of the ITC so that CITA's and the ITC's reviews are performed concurrently, and the consultation and layover period of 60 days before the appropriate congressional committees could commence more promptly.

There are no statutory restrictions on initiating the ITC report immediately, or on, for example, CITA or USTR staff initiating preliminary discussions with Canada while the public processes in the United States are carried out. Indeed, based on the ITC's numerous previous findings that Liberty was the only U.S. producer of rayon fibers, discussed further below, and the consultations with Canada concerning rayon fibers and yarns, the Executive Branch should move as expeditiously as possible, now that Liberty's closure is a matter of public record, to initiate consultations with Canada to change the rule of origin and preserve the capacity of U.S. non-woven producers to benefit from NAFTA.

Moreover, we note that the ITC initiates its investigation concurrent with CITA's review of petitions under the Caribbean Basin Trade Partnership Act (CBTPA) and the African Growth and Opportunity Act (AGOA). See e.g., COMMERCIAL AVAILABILITY OF APPAREL INPUTS (2004): EFFECT OF PROVIDING PREFERENTIAL TREATMENT TO APPAREL OF CERTAIN YARN OF MICRO MODAL® FIBERS FROM ELIGIBLE CARIBBEAN BASIN, ANDEAN, AND SUB-SAHARAN AFRICAN COUNTRIES, Investigation No. 332-458-025 (February 2005) (Attached and hereinafter referred to as Exhibit A). Therefore, concurrent CITA and ITC review is not without precedent.

We ask that this petition be advanced in the ordinary course through the notice and comment process while any necessary and extraordinary review of the requested procedural steps is undertaken.

B. Proclamation with Retroactive Effect.

A proclamation changing the applicable NAFTA rule of origin effective October 1, 2005 is not only appropriate under the circumstances it is lawful in the United States. Notably, 19 U. S.C. §1313 specifies requirements for the effective date of actions proclaimed that were not the subject of the consultation and layover procedure, but is silent on the effective date of actions taken following consultation and layover. Congress having been silent on the effective date of such proclamations has left the President's independent constitutional power unrestricted.

Courts have routinely upheld retroactive Executive Orders. The most explicit declaration of the permissibility of a retroactive Executive Order was made in *Sea-Land Service, Inc. v. I. C. C.*, 738 F.2d 1311 (D.C. Cir. 1984). In *Sea-Land*, the Court of Appeals for the District of Columbia upheld an explicitly retroactive Executive Order, stating:

> The plain language of the Executive Order makes clear that the President intended it to have retroactive impact. We therefore find no reason to entertain the ordinary presumption in *Greene* that laws be interpreted wherever possible as having solely prospective effect. *Id.* at 1314.

The court went on to note that Congress may restrict the President's authority to issue Executive Orders, but that absent such restriction, retroactivity was a permissible component of a Presidential directive. *See also, Friedlander v. US.*, 1951 WL 5367 (Ct. Cl. 1951) (holding that a retroactive Executive Order is valid); *North American Foreign Trading Corp. v. US.*, 600 F. Supp. 226, 230 (Ct. Int'l Trade 1984) (stating that retroactivity does not automatically invalidate an Executive Order).

Executive Order No. 1 1030,27 Fed. Reg. 5847 (June 19,1962) defines Presidential Proclamations and Executive Orders identically and leaves the determination of which title to attach to an action to the President. The Supreme Court has held that there is no material difference between a Presidential "proclamation" and "order." *Wolsey v. Chapman*, 101 U.S. 755, 770 (1880). Therefore, the President generally may use either directive to accomplish a legally permissible goal and the clear precedents authorizing retroactive Executive Orders apply equally to Presidential Proclamations.

The retroactive effect of the proposed rule change should be the subject of the advice solicited from the ITC and the advisory committees and would be part of the proposed action that is subject to the consultation and layover requirement, so there will be adequate public consideration of such an action.

II. Requested Rule of Origin Change

The current NAFTA rule of origin applicable to the subject articles classifiable in HTS chapters 52, 54, 55, and 56 is expressed as a specific tariff-shift requirement applicable to a particular head, subheading, or group of headings or subheadings. To effect the desired change through changes to the specific product rules would entail many changes throughout chapters 52, 54, 55, and 56. We believe that the simplest way to implement the requested changes would be to implement the changes by means of new chapter rules for chapters 52, 54, 55, and 56, thus:

> ***Chapter 52 Rule 1. For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall not apply to rayon fiber (other than rayon fiber composed of cellulose precipitated from an organic solution in which no substitution of the hydroxyl groups takes place and no chemical***

intermediates are formed and which is known by the generic description of "lyocell") in the good.

Chapter 54 Rule 1. For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall not apply to rayon fiber (other than rayon fiber composed of cellulose precipitated from an organic solution in which no substitution of the hydroxyl groups takes place and no chemical intermediates are formed and which is known by the generic description of "lyocell") in the good.

Chapter 55 Rule 1. For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall not apply to rayon fiber (other than rayon fiber composed of cellulose precipitated from an organic solution in which no substitution of the hydroxyl groups takes place and no chemical intermediates are formed and which is known by the generic description of "lyocell") in the good.

Chapter 56 Rule 1. For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall not apply to rayon fiber (other than rayon fiber composed of cellulose precipitated from an organic solution in which no substitution of the hydroxyl groups takes place and no chemical intermediates are formed and which is known by the generic description of "lyocell") in the good.

Such a change at the chapter, rather than heading or subheading, level would also make it clear the trade the global nature of the change and avoid numerous requests for Binding Customs Rulings and other inquiries that a piecemeal approach would invite.

We note that using a chapter rule to effect a “global rule” that governs the specific product rules in the chapter, has a model in the chapters rules in chapters 61, 62, and 63.

Such a change at the chapter level should not be difficult to effect with Canada and Mexico. This is another reason we urge the most expedited consultations possible.

III. Proof of Commercial Unavailability of Viscose Rayon Fibers

A. Liberty Fibers Corporation Has Been Recognized as the Only U.S. Producer of Rayon Fiber.

It is a matter of public record that for at least the last four years of the company's production Liberty Fibers Corporation of Lowland, Tennessee, was the only U.S. producer of rayon staple fibers. The ITC has specifically found this to be the case in at least seven different investigations of commercial availability, including most recently in February 2005 when it described Liberty Fibers as "the sole U.S. producer of viscose" and as manufacturing "rayon primarily for nonwovens." See Exhibit A at p.3.

Additional ITC Reports of Investigation in which Liberty Fibers Corporation is referred to as the only or the sole producer of rayon staple fibers or rayon yarns, or in some cases as the "only known" producer of such items, include the following.

- CERTAIN SANITARY ARTICLES OF TRI-LOBAL RAYON STAPLE FIBERS: EFFECT OF MODIFICATIONS OF NAFTA RULES OF ORIGIN FOR GOODS OF CANADA AND MEXICO, Investigation No. NAFTA-103-9, at p.4 (December 2004) (Exhibit B).

- COMMERCIAL AVAILABILITY OF APPAREL INPUTS (2003): EFFECT OF PROVIDING PREFERENTIAL TREATMENT TO APPAREL FROM SUB-SAHARAN AFRICAN, CARIBBEAN BASIN, AND ANDEAN COUNTRIES, Investigation No. 332-450-009, at p.2 (January 2004) (Exhibit C).

- COMMERCIAL AVAILABILITY OF APPAREL INPUTS (2003): EFFECT OF PROVIDING PREFERENTIAL TREATMENT TO APPAREL FROM SUB-SAHARAN AFRICAN, CARIBBEAN BASIN, AND ANDEAN COUNTRIES, Investigation No. 332-450-008, at p.2 (December 2003) (Exhibit D).

- COMMERCIAL AVAILABILITY OF APPAREL INPUTS (2003): EFFECT OF PROVIDING PREFERENTIAL TREATMENT TO APPAREL FROM SUB-SAHARAN AFRICAN, CARIBBEAN BASIN, AND ANDEAN COUNTRIES, Investigation No. 332-450-007, at p.3 (December 2003) (Exhibit E).

- APPAREL INPUTS IN "SHORT SUPPLY": EFFECT OF PROVIDING PREFERENTIAL TREATMENT TO APPAREL IM PORTED FROM SUB-SAHARAN AFRICAN AND CARIBBEAN BASIN COUNTRIES, Investigation No. 332-428-010, at p.3 (January 2002) (Exhibit F).

- APPAREL INPUTS IN "SHORT SUPPLY": EFFECT OF PROVIDING PREFERENTIAL TREATMENT TO APPAREL IMPORTED FROM SUB-SAHARAN AFRICAN AND CARIBBEAN BASIN COUNTRIES, Investigation No. 332-428-008, at p.2 (July 2001) (Exhibit G).

In addition, the online fiber guide published by the American Fiber Manufacturers' Association (AFMA) specifically identifies Liberty Fibers Corporation as the only U.S. rayon fiber producer. See http://www.fibersource.com/f-tutor/rayon.htm. (Exhibit H).

We are unaware of any other U.S. or North American producers.

B. Liberty Fibers Corporation Has Ceased Production.

As has been widely reported, as of September 30, 2005, Liberty Fibers Corporation idled their plant, ceased all activity related to rayon fiber production. In statements by the company and its executives it has been made clear that only a small staff of employees has been retained and solely for the purpose of winding down operations and properly securing assets. See e.g., David Keim, *Majority of Workers Laid Off at Once-Giant Rayon Fiber Facility*, KNOXVILLE NEWS SENTINEL, October 1, 2005 (Exhibit I).

We are attaching copies of various news reports and press releases, including a release by the AFMA, confirming Liberty's cessation of production. (Exhibit J). All of these reports give no meaningful indication that Liberty will ever again produce rayon fibers.

IV. Conclusion

Considering the established record that Liberty was the only U.S. producer of rayon fibers and the incontrovertible fact that it has ceased production, it is in interest of United States industry for consultations to commence immediately on a change to the NAFTA rule of origin for all textiles and textile products.

Please contact me if CITA or other concerned agencies, committees, or offices have questions or requires additional information. Thank you for your attention and consideration.

Respectfully submitted,

Karl Spilhaus
President
National Textile Association