December 27, 2006

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

REF: Textile and Apparel Products From Vietnam: Import Monitoring Program; Request for Comments (71 FR 70364 – December 4, 2006)

Dear Secretary Spooner:

On behalf of the American Apparel & Footwear Association – the national trade association of the apparel and footwear industries, and their suppliers – I am writing in response to the request for comments in connection with the proposed import monitoring program of U.S. imports of textile and apparel products from Vietnam.

As you know, our members produce and market textiles and apparel in the United States and around the world, including Vietnam. Representing companies that import apparel from Vietnam and that produce apparel in the United States, we are well positioned to offer comments and insight on this program. Although we were not consulted in the initial development of this program – as it was apparently announced through a September 28, 2006 letter to Senators Elizabeth Dole (R-NC) and Lindsay Graham (R-SC)[1] – we welcome the opportunity to comment at this point and ask that we be included, and be provided the opportunity to participate fully, in any further consultations with respect to this monitoring program.

Our comments will be divided along two sections. First, we wish to offer several broad themes that we urge the Department to follow as it moves forward on this program. Second, we will provide specific input in response to several of the questions raised in the December 4 Federal Register notice.

In addition, we have signed on to other comments submitted in connection with the December 4 Federal Register notice, which amplify on many points contained herein.

[1] Letter from U.S. Trade Representative Susan C. Schwab and Commerce Secretary Carlos M. Gutierrez to Senator Lindsey Graham and Senator Elizabeth Dole, September 28, 2006

A. BROAD THEMES

1. The Monitoring Program Should be Conducted Consistent with U.S. Statutory Authorities and Consistent with World Trade Organization (WTO) Obligations

Since news of this monitoring program was first made public, many have questioned the basis of the Department's claim that it has the statutory authority to conduct such a monitoring program. Department officials have assured us that the program could be undertaken in a manner consistent with existing statutory authorities. To that point, the Department has not requested, nor has the Congress granted, any new legislative authority in connection with this monitoring program.

Thus, in order for the program to be able to proceed, all actions taken with respect to implementing the development and execution of the monitoring program must of course be done consistent with **existing legal authority.** At this point, we are uncertain of the legal authority under which the Department is basing this program. We look forward to better understanding the legal authority and we were disappointed that the December 4 Federal Register notice did not clarify this issue.

To that end, and before any further steps are taken on the program, we recommend that the Department identify legal authority it is relying on to develop and conduct the monitoring program. Our comments that follow are premised on the assumption that the Department can identify such authority and that it indeed permits a program like that outlined in the Federal Register notice and the aforementioned September 28 letter.

In a similar vein, we stress that the program be conducted in a manner consistent with U.S. WTO obligations. This is especially important because the entire exercise is triggered by the accession of Vietnam to the WTO and the application of a rules based system to U.S./Vietnam trade. Key to this principle is the requirement that U.S. imports of Vietnamese textiles and apparel are treated like similar U.S. imports from other countries and that the application of anti dumping trade remedy laws, including any possible monitoring done in conjunction with those laws, be conducted consistent with WTO disciplines for such trade remedy laws. We are concerned that as Vietnam joins the WTO and becomes subject to the same treatment as other countries, that we do not single Vietnam out for discriminatory treatment.

We also believe the Department needs to do a better job explaining how the monitoring program interacts with the possibility of self initiated anti dumping investigations and what role the information collected during monitoring will play in such an investigation. One key point that should be clarified is how the concept of "critical circumstances" will be applied. Our understanding is that, under current authority, such determinations can only be made after an investigation is started and also that the retroactive application of duties in such cases may not stretch back to before the initiation of the investigation. However, it would appear from the September 28 letter that the Department intends to make such determinations before investigations have started. This presents uncertainty to importers who may face duty liabilities. Since we are unaware of the authority that permits such actions we urge the Department to clarify its position as soon as possible.

Another central point to the connection between monitoring and possible anti dumping investigations relates to standing. Many have described the monitoring commitment as an effort to help the textile industry overcome a standing challenge. The Sept 28 letter states, "However, according to 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."[2] A press release from Senators Dole and Graham states more boldly, "This is the first time that the government has agreed to self-initiate on behalf of the U.S. textile industry."[3] Yet the products that are referenced in the letter and the December 4 Federal Register notice are apparel products, which are not produced by the U.S. textile industry. It would appear that the Department has committed to a process that could lead to self initiation of anti dumping cases on apparel imports on behalf of an industry that does not produce products like those apparel imports. This would appear to be a plain violation of current anti dumping law and WTO rules.

Per a colloquy inserted into the Congressional Record earlier this month by Senators Dianne Feinstein and Gordon Smith, you and Ambassador Schwab apparently discussed this concern. Senator Smith notes:

> Specifically, USTR and Commerce told us that it is their intention that any investigation would only cover those textile and apparel products imported from Vietnam which are like or identical to a product also produced in the United States. This also means that, consistent with U.S. law, the domestic producer will have to request monitoring and supply information about their employment levels and production. This makes sense to me because why would the U.S. Government monitor a product from Vietnam that is not produced in the United States or that the U.S. domestic industry is not interested in being monitored in the first place.[4]

This conversation, as reported by these two Senators, helps clarify that the Department is not attempting to side step the standing requirement. However, we believe the Department should confirm this commitment publicly so importers understand and can rely on the interpretation.

2. The Monitoring Program Should Not Constitute a New or Additional Burden on U.S. Apparel Producers or Importers

Equally important is the requirement that the monitoring program not create a new burden for either U.S. apparel producers or importers.

We are concerned that the program could result in significant new paperwork or import entry requirements, which would create an unfair burden on U.S. apparel importers. Department officials have advised us that they do not envision any program would impose new paperwork or information gathering on the import trade because such import data will come from publicly available sources. We believe any further guidance from the Department with respect to this

[2] See September 28 letter.

[3] See Dole/Graham Press Release "Dole, Graham Withdraw Holds on Vietnam Trade Bill. Commerce Department agrees to self initiate anti dumping cases on textile imports from Vietnam." September 29, 2006.

[4] Colloquy between Senator Dianne Feinstein and Gordon Smith, Congressional Record, December 8, 2006.

program should make clear that there will be no new burdens and identify the sources and methods through which this public data will be collected.

Likewise, we are concerned that domestic apparel producers may be required to provide information for a monitoring program that they do not support or believe is in their best interest. We note that the effort to initiate a monitoring program primarily or exclusively on U.S. imports of Vietnamese apparel was done at the request of U.S. textile interests, and not at the request of U.S. apparel interests. This situation sets up a scenario unlike other trade remedy cases where a domestic industry will be forced to participate in a trade remedy action that it does not support or wish to initiate. Any monitoring program should explicitly protect the right of these companies to not participate as well as the right to decline to supply any data or information to the Department if they wish to opt out. If a domestic apparel company is not impacted by imports of apparel from Vietnam, there should be no requirement that it participate in the program. Moreover, if enough of the industry decides not to participate, there should be no monitoring in the products produced by that industry.

3. The Monitoring Program Should Be Developed in a Transparent Manner

Key to the credibility of the program is the requirement that it be conducted in a transparent manner, especially given the non-transparent way in which this program was conceived.

Transparency is important if the trade is to develop any sense of predictability with respect to this particular program. This is especially critical given that Department officials have repeatedly stressed to us that no decisions have been made to launch anti dumping investigations with respect to imports from Vietnam. At the same time, many textile interests have equated the monitoring program with a pledge to self-initiate anti dumping cases.[5] Since no public statements have yet been made by the Department to disavow those statements, there has already developed a high level of expectation that anti dumping cases will be self initiated, whether the facts to substantiate a case are present or not. An open and transparent process that is based on facts and the principles of the U.S. anti dumping statute and the WTO – that an action can be taken only when the domestic industry of a product, which supports such a case, is being harmed by dumped imports of that like product – will be important to arrest these false perceptions and provide a common grounding that all interested parties can accept.

We believe all comments, hearings, statements and notices should be made part of a public record that can be easily inspected online. We urge that all decisions, including the types of products to be monitored, the design of production templates, and the identification of proxy countries, be subject to public comment and review. We further urge that the Department follow principles laid out in the Administrative Procedures Act to ensure maximum transparency.

We encourage the Department to solicit input and advice from all interested parties and welcome statements in the December 4 Federal Register notice that suggest such efforts. We

[5] See NCTO Press Release "Government to Self-Initiate Dumping Cases Against Vietnam When Quotas Expire," September 29, 2006 and Dole/Graham Press Release "Dole, Graham Withdraw Holds on Vietnam Trade Bill. Commerce Department agrees to self initiate anti dumping cases on textile imports from Vietnam," September 29, 2006.

encourage the Department to develop an e-mail notification list – similar to the one successfully used by the Office of Textiles and Apparel for short supply notices – so interested parties can receive timely notices of decisions and developments in conjunction with this process. We encourage the Department to make available all data sources, research tools, and other materials that it will use in conducting its reviews. We further encourage the Department to release publicly the results of those reviews every six months so the trade can develop a better understanding of what results can be expected from various import patterns. We encourage the Department to develop metrics or other data threshold points below which no trade remedy cases would be initiated. Such a tool is important to provide the import community a ready way to ascertain on a regular basis the likelihood that a trade remedy case may be initiated at the end of any given period so they can appropriately manage their risks and structure their operations. We urge that all final rules and procedures regarding the monitoring program be published before any monitoring can begin. Finally, if monitoring results in a preliminary decision to self initiate, we believe that such decision should be announced in the Federal Register and be subject to hearings and the opportunity for public comment before a final determination is made.

4. The Monitoring Program Should Not Be A Waste of Government and Private Sector Resources

Any monitoring program is likely going to involve a significant expenditure of government and private sector resources. Should the monitoring result in an actual self initiation of an anti dumping case, the costs and expenses will increase dramatically. Department officials have advised us that it would be a "cruel joke" if the Department decided to self-initiate an anti dumping case that then failed at the International Trade Commission (ITC) because there was no domestic industry that was willing to support the case moving forward. However, this seems a very real possibility given that the decision to monitor apparel imports was made on behalf of the domestic textile industry (which does not have standing to petition for, or comment on, such trade remedy relief) and not the domestic apparel industry.

Thus, it is imperative that monitoring be done only with respect to those imports where there is some possibility that a successful anti dumping case could be pursued. In this respect, we offer several concepts that we would expect the Department to embrace publicly as it moves forward with the program.

- Monitoring should not be done where there is no domestic production of a like product. Performance outerwear and ski pants are just two examples of products that are not made in the United States.

    - Domestic apparel production must not include products made under the Berry Amendment (which involves sales to the U.S. military). That production is, by law, protected from import competition so it would be impossible for Vietnam's imports to cause injury.

    - Domestic apparel production must not include products that are made in offshore assembly centers, such as Central America or Mexico. Likewise, domestic apparel production should not include inputs that go into apparel, such

as fabrics and yarns. Neither U.S. anti dumping law nor WTO principles allow for such articles to be counted as domestic production in trade remedy cases.

- Monitoring should not be done when the domestic apparel industry producing that like product does not step forward to supply data, affirm that it wishes for a product to be monitored, or certify that it is willing to support the case in all phases of an investigation should an investigation be initiated by the Department.

- Monitoring should be not be done when U.S. imports from Vietnam of a specific product constitute a small share – say 15 percent or less – of the total U.S. apparel import market for that product. It will be difficult for the ITC to link dumped imports with injury to a U.S. producer if Vietnam is not the dominant supplier to the U.S. market.

- Monitoring should be restricted to products identified within the five product groups – trousers, shirts, underwear, swimwear, and sweaters – identified in the December 4 Federal Register notice and in the September 28 letter to Senators Dole and Graham.

- Monitoring should focus on those facilities that were the focus of the initial monitoring request – namely "the state run textile and apparel industry."[6] While we do not know if the contentions made by textile interests are true, we believe the most efficient use of government resources would be in the monitoring of only imports from those facilities, provided there is domestic production that matches those imports per our points above.

B. RESPONSES TO SPECIFIC QUESTIONS RAISED IN THE FEDERAL REGISTER NOTCE

1. Consultative Process with Interested Parties

We addressed several points above with respect to our deep desire that the development of this program remain transparent. We wish to underscore some of those points and offer several additional comments:

First, while we welcome the Department's efforts to solicit input from all interested parties, we urge you to measure and incorporate that input appropriately. Not all interested parties are relevant to all points of the program. For example, in a decision about which products to monitor, we do not believe it is appropriate to consider a request by a textile firm to have an apparel product monitored unless that textile firm is also producing that same product in the United States.

Second, we believe the Department should endeavor to hold several public and "on-the-record" discussions or briefings with all parties so that all parties can simultaneously here the Department's explanations to common questions and concerns. It is important that there be established a common record on this process so we can quickly eliminate any false expectations.

[6] See Letter from U.S. Trade Representative Susan C. Schwab and Commerce Secretary Carlos M. Gutierrez to Senator Lindsey Graham and Senator Elizabeth Dole, September 28, 2006.

2. Products

In addition to the points we noted above with respect to ensuring an efficient use of Department resources, we note the following:

The Department should conduct monitoring and reviews only on an HTS basis since the U.S. Textile and Apparel Category System provides insufficient detail to conduct a meaningful review. We do not see the need for a "bellwether" product since the Department should only monitor specific products where, as we described previously, the conditions might exist for a trade remedy case. As noted above, we strongly believe that only publicly available data be used and that products **only** be monitored when there is a domestic industry producing a like product that specifically ask that the products be so monitored.

3. Production Templates

We ask to be consulted in any and all requests for information concerning the development of production templates.

We are not able to identify which proxy countries can be used – and submit that nobody can answer that question – until we know precisely which products are being monitored. We believe it is impossible to assign one proxy country for all apparel or even for all apparel in a single category. Moreover, while we recognize the limitations of conducting AD investigations in a non market economy, we remain dubious that a monitoring program that compares Vietnamese exports with the exports of another country will yield a meaningful result.

4. Domestic Industry Information

We remain concerned about potential burdens for our many domestic apparel members. As noted above, we wish to ensure that any monitoring or potential anti-dumping investigations not result in solicitations of information from companies not interested in seeing the monitoring or any subsequent investigations proceed. We believe the Department should use only publicly available information in conducting its monitoring. To the extent that questionnaires are issued to domestic apparel companies, such questionnaires should indicate plainly and conspicuously that companies do not need to fill out and return the questionnaires.

Moreover, as noted earlier, monitoring should only be conducted when there are a sufficient number of companies actively interested in supporting the monitoring and any potential ITC investigation, and are willing to certify that upfront.

5. Biannual Evaluation Process

Many of the decisions in our industry are based on the predictability achieved through a stable regulatory environment. A decision every six months about potential anti dumping cases can be very unsettling and will no doubt have a chilling effect on trade. Withstanding a more frequent review process would be even worse. Thus, we urge that no additional reviews/evaluation be conducted outside the biannual reviews. Moreover, as noted above, we believe the results of the biannual reviews be announced publicly.

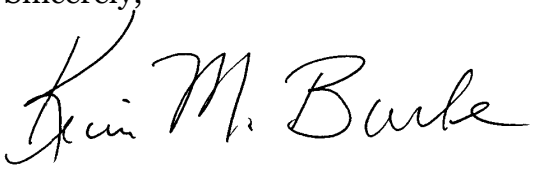
6. Public Dissemination of Information

As noted above, we believe the Department should provide to the general public any and all data sources and tools it is using to justify and conduct the reviews and monitoring. We believe this monitoring – if done pursuant to the principles we outlined above – will not result in the initiation of AD cases. If the information on which such non-initiation decisions is made fully public, there will be more public confidence and acceptance of those decisions. We also strongly recommend that the Department establish easily understood metrics or data points that, if not exceeded, would definitively foreclose the possibility of initiation of a trade remedy case during a given period. Moreover, in the unlikely case that an anti dumping case is initiated, the timely availability of data and other information used by the Department will help provide the business community with information that a trade remedy case may be imminent.

* * * * *

In conclusion, we welcome the opportunity to submit these comments and look forward to the opportunity to provide further input – either through written comments or at hearings – on this important issue.

Sincerely,



Kevin M. Burke
President and CEO