



December 27, 2006

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

Re: Textile and Apparel Products from Vietnam: Import Monitoring Program; Request for Comments

Dear Mr. Spooner:

The **National Retail Federation** ("NRF") submits these comments on behalf of the U.S. retail industry in response to the notice by the U.S. Department of Commerce, International Trade Administration ("ITA") published in the December 4, 2006, Federal Register (71 Fed. Reg. 70,364) requesting public comment on establishment of a monitoring program ("import monitoring program") covering imports of textile and apparel products from Vietnam. According to the ITA, the import monitoring program will enter into force upon Vietnam's accession to the World Trade Organization ("WTO"), and expire on January 19, 2009.

Over the past seven years, apparel retailers in NRF's membership have built large sourcing operations in Vietnam and now import well over \$1 billion worth of Vietnamese-produced clothing – a sizable portion of the U.S.-Vietnam bilateral trade – which is sold to American consumers in their U.S. stores. As a result, these retailers understand very well the dynamics of apparel trade with Vietnam, and welcome the opportunity to provide these comments through their trade association.

The establishment of the import monitoring program is intended to implement a political commitment ("the commitment") memorialized in the September 28, 2006, letter from the Administration to Senators Elizabeth Dole (R-NC) and Lindsey Graham (R-SC) in response to efforts by the U.S. textile industry to maintain U.S. trade barriers against textile and apparel imports from Vietnam. The objective of the import monitoring program is to determine whether the Administration should self-initiate antidumping investigations against these imports.

Antidumping investigations are normally initiated by U.S. producers of comparable products ("the domestic industry") through the filing of a petition with the U.S. Department of Commerce and the U.S. International Trade Commission. In addition, initiation requires

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a requisite level of support from the domestic industry in order to proceed. Although such cases may be “self-initiated” by the Government on behalf of a domestic industry, the practice is rare, has not been done in an antidumping context in 21 years, and in no instance on behalf of an industry that did not have a clear right under U.S. law to do so itself.

The vast majority of textile and apparel imports from Vietnam consists of clothing rather than textile products (i.e., yarns and fabrics), and the commitment identifies a wide range of apparel products as “particularly sensitive.” However, the commitment was secured at the request, and, it is claimed, for the benefit of the U.S. textile industry, which does not make comparable products to apparel.

In response to the greater unpredictability and risk to their sourcing operations created as a result of the commitment,<sup>1</sup> a number of NRF members have decided to limit their exposure in Vietnam, either by substantially cutting their orders in the second half of 2007, or to terminate them entirely.<sup>2</sup> Moreover, they have informed NRF that this production will move to other Asian countries, not the United States or other Western Hemisphere countries.

On the substance of the commitment, NRF has serious reservations regarding the existence of statutory authority for the Import Monitoring Program and the Administration’s

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<sup>1</sup> Industries seeking protection from imports know antidumping actions are a particularly effective trade barrier because the mere threat of an antidumping investigation will immediately increase unpredictability for importers, dramatically slow import volumes, and substantially raise prices for the imported (and domestically-made) product. The Administration has not refuted the claim by the textile industry that, as a result of the commitment, the Administration will initiate antidumping investigations.

This threat severely damages the retailer/importer’s business model. The retailer/importer has made investments and placed orders based on projections for costs, return on investment and profit margin, only to find, thanks to an unanticipated antidumping case, that it may be liable for millions of dollars in retroactive import taxes. That cost goes straight to a company’s bottom line and cannot be recouped. No business can operate with that degree of unpredictability as to their projected costs and potential impact on their sales and profits. In our view, creating a complex monitoring mechanism using surrogate countries and production templates to calculate a normal value constitutes a de facto launching of an antidumping investigation. Also, the fact an investigation would be initiated by the government rather than by petition by a domestic industry substantially increases the risk that antidumping duties will be imposed.

<sup>2</sup> Unlike a steel mill, an apparel factory can be dismantled and moved to another country in a matter of weeks. There is concrete historical evidence of the adverse impact of an antidumping case on apparel production. In the late 1980s, U.S. retailers were hit with an antidumping case on sweaters they were importing from Taiwan. Although the Taiwanese won that case after four years of fighting it, by then retailers and manufacturers had already pulled their orders and production out of the country to other Asian locations and the Taiwanese sweater industry was largely gone.

proposals on the use of production templates and consideration of critical circumstances. The statutory reference cited in the commitment (19 USC 1673a(a)) limits monitoring to specific instances, none of which is applicable to the current situation. We have received general assurances from ITA and USTR that actions taken pursuant to the commitment will be consistent with existing U.S. law, and that no further statutory authority is need or will be requested from Congress. Therefore, before the monitoring program is implemented, we request that ITA identify and explain the specific existing statutory authority that would permit it to take these proposed actions.

We are also believe that, by singling out imports from Vietnam, the monitoring system would violate the principle of most-favored-nation treatment under WTO rules. Therefore, we request that the ITA respond to our concern and explain before implementation how the monitoring system is consistent with U.S. obligations under the WTO.

In addition, we want assurances from ITA that on these and other issues, the monitoring system and any action to self-initiate antidumping investigations do not circumvent requirements under U.S. antidumping law regarding such key matters as standing,<sup>3</sup> injury, industry support, and the timeframe for determinations. We also want to ensure that the consultative process allows full opportunity for retailers and other interested parties to provide input into all aspects of the process, including access to information under administrative protective order (APO) for importers of record.

We also seek assurances that any monitoring of imports from Vietnam will be conducted in a manner that does not burden textile and apparel trade or require additional paperwork from U.S. apparel importers beyond the normal entry documents. Moreover, the monitoring system should be limited to examining products defined according to the Harmonized Tariff Schedule, not quota categories, which were created for administration of the textile and apparel quota system and are overly broad for purposes of antidumping cases. Any monitoring should also only be conducted with respect to those products where the same product is actually produced in the United States and sold in the commercial market. In addition, to be subject to monitoring, such imports must constitute a sizable share of the U.S. market. Finally, a majority of producers of a competing domestic product must specifically request that the imported product be monitored. Requests from textile manufacturers to monitor apparel imports should not be accepted unless the manufacturer also makes the apparel product in the United States for sale in the commercial market.

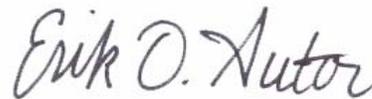
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<sup>3</sup> U.S. law has clear standing requirements on who may file an antidumping petition: (1) petitioners must represent an industry producing a "like product"; (2) the petition must have the support of domestic producers that account for at least 25 percent of the total production of the like product; and (3) petition supporters must account for over 50 percent of total production of all producers expressing a position on the petition.

A joint industry letter signed by NRF and other trade associations and companies that will be sent separately to the ITA in response to the Federal Register notice will expound in greater detail upon these and other specific points and questions raised in the notice.

The **National Retail Federation** is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.5 million U.S. retail establishments, more than 23 million employees - about one in five American workers - and 2004 sales of \$4.1 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

Sincerely,

A handwritten signature in black ink that reads "Erik O. Autor". The signature is written in a cursive, flowing style.

Erik O. Autor  
Vice President, Int'l Trade Counsel  
National Retail Federation