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Public Comment  
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**PUBLIC DOCUMENT**

David M. Spooner  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
14<sup>th</sup> St. and Constitution Ave., N.W., Room 1870  
Washington, D.C. 20230

**RE: Department Request for Comments- Monitoring of Textile and Apparel Products from Vietnam**

Dear Assistant Secretary Spooner:

These comments regarding import monitoring of textile and apparel products from Vietnam<sup>1</sup> are being filed on behalf of the Vietnamese textile and apparel producers listed below: (the “Vietnamese Producers Group” or “VPG”).

- A First Vina Co., Ltd.
- Beeahn-Vietnam Co. Ltd.
- Branch of Anhvu Garment Im-Export Co. Ltd.
- Eins Vina Co., Ltd.
- Global Manufacturing Vietnam Co., Ltd.

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<sup>1</sup> See *Request for Public Comment-Import Monitoring of Textile and Apparel Products from Vietnam*, 71 Fed. Reg. 703446 (December 4, 2006).

- Hansae Vietnam Co., Ltd.
- Hansoll Vina Co. Ltd.
- Hung Long Garment & Service Stock Company
- Ivory Vietnam Co. Ltd.
- Joint Venture Beeahn Hung Yen 2 Co., Ltd.
- Khaihoan Garment Embroidery Co., Ltd.
- NB Vietnam 2 Co., Ltd.
- Nobland Vietnam Co., Ltd.
- Seshin Vietnam Co. Ltd.
- Shinsung Vina Co., Ltd.
- Shinwon Ebenezer Vietnam Ltd.
- Song Hong Garment Stock Company
- Vina Korea Co., Ltd.
- Viet Pacific Apparel Co., Ltd.
- Viet Pacific Clothing Co., Ltd.
- Viet Pan-Pacific International Co., Ltd.

Each of the Vietnamese companies referenced above produces apparel products exported to the United States and, accordingly, has a direct interest in the proposed monitoring program.<sup>2</sup> As instructed by the Department's notice, we are submitting an

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<sup>2</sup> VPG reserves its right to challenge the Department's proposed monitoring system as a matter of law.

original and four copies of these comments, as well as an electronic version on the enclosed CD-ROM. No proprietary information has been included in these comments.

As explained in detail below, the Department's proposed monitoring program is unnecessary, VPG submits, because, among other reasons, existing procedures under U.S. law protect the U.S. industry from textile and apparel products that may be found to benefit from prohibited subsidies. Should the Department, nevertheless, continue its plans to implement the proposed monitoring program, however, the VPG provides the following suggestions to assist the Department with developing a program that: 1) is narrowly tailored to include only those products produced by the domestic industry and 2) is designed to minimize burdens and restraints placed upon Vietnam exporters and U.S. importers who not only comply with U.S. antidumping law, but play an important role in supplying apparel products which are not produced in the United States.

### **I.**

#### **The Existing Remedy That Already Protects the Domestic Industry Against Unfairly Traded Vietnamese Textile and Apparel Products Makes the Monitoring Program Unnecessary**

In letters dated September 28, 2006, to Senators Dole and Graham, the Bush Administration stated that it would implement a monitoring program for U.S. imports of textile and apparel goods from Vietnam and would, on a biannual basis, determine whether there is sufficient evidence for the Department to self-initiate antidumping investigations. The Administration explained that it was introducing this program to allay concerns that "Vietnam may continue to offer prohibited subsidies to the state run textile and apparel industry, which could result in unfair competition in this sector, possibly including dumping

in the U.S. market.”<sup>3</sup> As explained below, however, there is already a remedy in place to protect U.S. producers from alleged Vietnamese subsidies thereby making the proposed monitoring scheme unnecessary.

The Extension of Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of Vietnam (“Trade Bill”) signed into force by President Bush on December 20, 2006, provides strong protection to the domestic industry against prohibited Vietnamese subsidies.<sup>4</sup> Under the Trade Bill, the United States Trade Representative (“USTR”) is authorized, based either upon a petition filed by an interested party or its own initiative, to conduct proceedings to determine whether the Government of Vietnam (“GOV”) is providing prohibited subsidies to the textile or apparel industry.<sup>5</sup> Once a proceeding is initiated, the USTR is required to notify the GOV and to request consultations; hold a public hearing if requested by an interested party and to consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.<sup>6</sup>

Based upon these proceedings, the USTR is to publish a reasoned determination in the Federal Register as to whether prohibited subsidies are being provided. If the USTR determines that prohibited subsidies exist, the USTR is to request arbitration under the WTO Dispute Settlement Understanding and is permitted to impose quotas where the arbitrator finds that prohibited subsidies are being provided or where the arbitrator fails to issue a determination within 120 days.

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<sup>3</sup> See Letters from the Honorable Susan C. Schwab, United States Trade Representative and the Honorable Carlos M. Gutierrez, Secretary of Commerce to Senator Dole and Graham, dated September 28, 2006. A copy of the Dole letter, which is identical to the Graham letter, is attached at Appendix A.

<sup>4</sup> Extension of Non Discriminatory-Treatment (Normal Trade Relations Treatment) to the Products of Vietnam, H.R 6111 dated December 8, 2006. This bill was signed into force on December 20, 2006.

<sup>5</sup> *Section 4003(b) and (c)*.

<sup>6</sup> *Sections 4004 and 4005*.

In light of the foregoing, the proposed monitoring scheme is both redundant and unnecessary. Not only will the dual proceedings create confusion, but there is the risk that the two proceedings will lead to inconsistent results on the same imports. The monitoring program is thus, a significant, and unnecessary, burden on exporters, importers and the retail community, each of which needs a measure of certainty with respect to business planning.

Additionally, it is important to note that there is absolutely no evidence that the GOV is providing prohibited subsidies to its textile and apparel companies. In its bilateral accession agreement to join the WTO (“Accession Agreement”), the GOV specifically promised to eliminate subsidies and agreed to special dispute settlement proceedings if prohibited subsidies were found to exist.<sup>7</sup> There is no reason to believe that the GOV will not abide by its obligations under the WTO.

## **II. Comments Regarding the Proposed Monitoring Program**

Should the Department, notwithstanding the above discussion, continue its plan to implement a monitoring program, VPG provides the following comments to assist the Department to develop a program that protects the interests of the domestic industry, without unduly burdening exporters and importers complying with U.S. antidumping requirements. It is important to note that the Department’s notice regarding the proposed monitoring program is extremely vague, making it difficult to provide detailed comments regarding possible methodologies. VPG reserves the right to provide additional comments and suggestions once details regarding the Department’s monitoring program are fully disclosed to the public.

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<sup>7</sup> It is our understanding that the text of Vietnam’s Accession Agreement will not be made publicly available until Vietnam joins the WTO on January 11, 2007.

**A. Consultation Process with Interested Parties**

**1. Consultations With Respect to Developing the Monitoring Program**

**a. Consultation with the Vietnamese Government**

In developing a monitoring plan for Vietnamese textile and apparel products, it is important that the Department, as well as other appropriate representatives of the Administration, engage in formal consultations and dialogue with the GOV. It is in the best interest of all involved that issues regarding the possibility of prohibited subsidies be resolved at a government-to-government level. This would eliminate the need for a monitoring program altogether, conserving valuable government resources. A government-to-government solution would also be consistent with agreements and understandings made between the two countries in Vietnam's Accession Agreement and demonstrate to other members of the WTO that the United States intends to abide by its obligations under the WTO Antidumping Agreement to limit self-initiated antidumping proceedings to situations where "special circumstances" exist.<sup>8</sup>

**b. Consultations with Interested Parties**

It is important that the Department continue consultations with all interested parties with respect to its proposed monitoring program. VPG suggests that the Department publish a preliminary notice of its monitoring plan in the Federal Register and provide parties an opportunity to provide additional comments and rebuttal comments before the plan is implemented in a final Federal Register notice. As noted above, the Department has provided parties with little information as to how it intends to monitor imports and evaluate whether there is sufficient evidence to self-initiate antidumping investigations. As a result, it is

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<sup>8</sup> *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 5.6.*

difficult to provide comments that are not speculative in nature, thereby effectively depriving VPG of its opportunity to comment.

**c. Public Hearings**

While the VPG agrees that public hearings should be held with respect to the monitoring process, VPG also believes that there is no benefit to holding hearings outside of Washington, D.C. As a general rule, hearings in antidumping proceedings are held at the Department in Washington. It may well be a waste of U.S. government resources to take the highly unusual step of conducting hearings outside of Washington D.C., requiring government officials to travel long distances for hearings which have the potential of providing little, if any, meaningful new information.

Because, as the Department acknowledges, the monitoring program has an impact on a broad array of parties such as domestic and Vietnamese producers, U.S. retailers, importers and the GOV, VPG suggests that the Department define which parties qualify as interested parties. In that regard, we submit it is impossible for the Department to develop an effective monitoring program without first developing a detailed understanding of the status of the domestic industry.

**d. Additional Advisory Groups**

VPG believes that the Department should consult relevant advisory groups such as those representing the importing and retailing community as part of the monitoring process.

**2. Consultations After the Monitoring System Has Been Implemented**

**a. Consultations with the Vietnamese Government**

It is important that the Department continue formal consultations with the GOV even after the Department begins to monitor Vietnamese imports. Consistent with provisions set

forth in the Trade Act discussed above, as well as Vietnam's Accession Agreement, VPG suggests formal consultation between the two governments be established beginning at least 30 days prior to the date the Department completes its evaluation process.

**b. Consultation with Interested Parties**

The consultation process with interested parties should also, VPG believes, continue after the formal monitoring program has been implemented. Formal consultation is particularly important with respect to the Department's biannual evaluations as to whether there is sufficient evidence to self-initiate antidumping investigations. As with antidumping investigations and administrative reviews, VPG suggests the Department issue preliminary evaluation results and provide interested parties the ability to provide comments. Similarly, interested parties should be permitted the opportunity to present their views at a public hearing, prior to any possible self-initiation.

**B. Products**

**1. The Department Should Exclude Products Not Produced by the Domestic Industry From the Monitoring Program**

The Department's proposed product groups, trousers, shirts, underwear, swimwear and sweaters, must be substantially narrowed to enable the Department to properly assess whether sufficient evidence exists to warrant self-initiating antidumping investigations. Under U.S. antidumping laws, an antidumping proceeding may only be brought with respect to products produced by the domestic industry. The product categories set forth above make it virtually impossible for the Department to determine whether a domestic industry exists because each grouping includes a large pool of distinct, individual products. Furthermore, it is VPG's belief that many products within each group are not produced in the United States and,



accordingly, do not support an antidumping investigation and, therefore, should be outside the scope of the Department's monitoring program. Likewise, VPG submits, products with negligible production in the U.S. should be excluded from antidumping monitoring.

In addition, VPG urges the Department to consider product characteristics, such as the presence of zippers, weight, material type, etc. when identifying the domestic industry. Apparel products are very diverse. A shirt tailored for high-end retailers with detailed sewing, high thread count fabric, french cuffs, a fancy collar, and pockets is a product that is separate and distinct from a work shirt manufactured for discount retail stores with no detailed sewing, low thread count fabric and regular cuffs and should not be treated as the same product for antidumping monitoring purposes. The Department should only monitor imports from Vietnam that have identical characteristics as those manufactured in the United States.

## **2. The Department's Monitoring Program Should Account For Changes in Product Mix**

In designing and implementing the monitoring program, VPG urges the Department to play close attention to changes in product mix as such changes have the potential to cause price shifts (both up and down) that may distort the Department's evaluation of import data. It is not unusual for producers to change product mixes for reasons such as consumer preferences or seasonal considerations. Cashmere sweaters, for example, may be favored by consumers one winter season when the economy is good and consumers feel financially secure enough to purchase high ticket items. When the economy turns downward in a winter season, however, the same consumers may purchase lower priced wool or synthetic sweaters.

An analysis based simply on prices across a product line may suggest, for example, that sweater prices have declined. That decline in prices, however, may not be evidence of dumping, but rather simply reflects a change in product mix. VPG requests that the Department pay close attention to such changes in product mix for purposes of the import monitoring program and make necessary adjustments to alleviate any distortions which may be caused by changes in product mix.

### **C. Production Templates**

When the Department investigates imports from a non-market economy (“NME”) country such as Vietnam, the Department bases normal value (“NV”), in part, on the NME producer’s factors of production (“FOP”), valued in a surrogate market-economy country or countries.<sup>9</sup> In choosing a surrogate country, the Department uses the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of the comparable product.<sup>10</sup> In the past, the Department has determined that Bangladesh, Pakistan, India and Indonesia are countries comparable to Vietnam in terms of economic development.<sup>11</sup> Unless and until product lines are selected for an antidumping investigation, however, there is no basis for selecting any particular market economy country as a surrogate.

In addition, in developing production templates, it is important that the Department limit its analysis to those products produced by the domestic industry. As discussed in detail above, the five product categories referenced in the Department’s *Request for Comment* are

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<sup>9</sup> 19 U.S.C. § 1677b(c)(1). Attached as Appendix B.

<sup>10</sup> *Id.*

<sup>11</sup> See, *Certain Froze Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Administrative Review*, 71 Fed. Reg. 53387 (September 11, 2006).

overly broad. Also, in developing production templates, the Department should follow its practice of using market prices for inputs purchased in market economy countries and paid for in market economy currencies. Where market economy inputs are used, VPG submits that inputs purchased from market-economies should be valued at their actual costs.

#### **D. Domestic Industry Information**

It is important that the Department conduct an extensive analysis of the domestic industry in light of the fact that antidumping investigations may be initiated only on behalf of a domestic industry. The only way to adequately determine relevant information such as production and capacity utilization is through questionnaires issued to the domestic industry. It is important that the Department not limit its examination to publicly available information, as proprietary information is necessary for this process. Helpful information would include U.S. market share, sales, production quantities, productivity, profitability, capacity, capacity utilization, return on investment, price trends, price suppression, price depression, lost sales, lost revenues, and lost customers. VPG suggests that the Department collect and make available public information regarding the domestic industry on a monthly basis. Moreover, VPG suggests that the Department verify information provided by the domestic industry to ensure its accuracy.

VPG also submits that it is important that the Department examine the global industry and market information. As part of this process, the Department should consider whether other countries are causing injury to the domestic industry. The Department can make a decision to self-initiate only if it understands the various sources of potential injury to the United States industry. As the Department is aware, it is not enough to show that the

domestic industry is injured. Rather, the evidence must support the conclusion that Vietnamese imports are a cause of injury to the domestic industry.

**E. Biannual Evaluation Process**

VPG suggests that the biannual evaluation process be conducted as transparently as possible and provide all interested parties an opportunity to participate both through written comments (including the opportunity for rebuttal comments) and by participating in a formal hearing. The primary focus of the Department's biannual evaluation must be whether there is any evidence of dumping and whether there is evidence that the domestic industry is injured or threatened with injury by reason of dumped imports from Vietnam. In reaching this determination, one of the most important considerations is whether there is truly a domestic industry. Where no domestic industry exists, the corresponding product under review should be removed from the monitoring program.

As part of the biannual process, VPG believes that it would be beneficial for the Department to undertake intermittent, mid-term or staged analysis of import and market trends. This information should be disseminated to the parties on a regular basis as soon as available. In addition, and as noted above, the Department should formally consult with the GOV as part of its biannual evaluation process.

**F. Public Dissemination of Information**

It is important to keep the monitoring system as transparent as possible. Accordingly, the Department should disseminate all public information collected on a monthly basis. VPG submits that information pertaining to specific ports and specific importers should not be released as this may include proprietary information.

### **III. Conclusion**

For the reasons expressed above, VPG respectfully requests that the Department address concerns regarding the potential of prohibited subsidies on a government-to-government basis, rather than through the antidumping monitoring and self-initiation program. If, however, the Department continues with its plans for monitoring, such monitoring should be conducted narrowly, focusing only on those products produced by the domestic industry. Moreover, imported textile and apparel products that are not produced, or produced only in negligible amounts in the U.S., should be excluded from the monitoring program.

Respectfully Submitted,

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Kristen Smith

Counsel to the Vietnam Producers  
Group