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**Written Testimony
Submitted by the
American Apparel & Footwear Association (AAFA)**

**Before the
House Ways & Means Committee Subcommittee on Trade
On
Supporting Economic Growth and Job Creation through
Customs Trade Modernization, Facilitation, and Enforcement**

May 17, 2012

Thank you for providing us this opportunity to submit testimony in relation to the hearing cited above. We applaud the subcommittee for addressing this issue at a time when the need for balancing security and trade facilitation is essential.

The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. AAFA members produce and market apparel and footwear throughout the United States and the world. In short, AAFA members make everywhere and sell everywhere, with trade preference beneficiaries and free trade agreement partners, with some of the most of advanced economies and some of the fastest developing markets to some of the poorest countries on earth, in this hemisphere and around the world.

While apparel, footwear, textiles and textile products represented only 5.7 percent of all U.S. imports in 2011, these products accounted for almost half (48.0 percent) of all import duties collected by U.S. Customs and Border Protection (CBP) during the year – to the tune of \$13.7 billion.

Consequently, any efforts undertaken by your subcommittee to reform CBP's trade facilitation, enforcement or security activities would have a significant impact on the U.S. apparel and footwear industry in general and AAFA's members in particular.

At the outset, we would like to reiterate AAFA's unwavering commitment to national security. AAFA members recognize the importance of preventing the importation of high-risk shipments into the United States, particularly the smuggling of weapons of mass destruction and related materials. AAFA members are committed to working with CBP and other U.S. law enforcement agencies to prevent this from happening and to keep America secure and safe from terrorist threats.

AAFA members have been at the forefront of these efforts, investing significant resources to secure their supply chains and working collaboratively with the government to make the United States secure.

Striking the right balance between enhancing national security and facilitating trade is critical to AAFA members. Today, 99 percent of all footwear and 98 percent of all apparel sold in the United States is imported. Therefore, the smooth flow of trade in and out of the United States is essential.

However, new legislation and new federal regulations over the last few years have created significant new import obligations for U.S. apparel and footwear firms that were developed and implemented with limited industry consultation or

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without full consideration of the measures' economic implications. Further, some groups unsatisfied with the pace of globalization continue to ask Congress to impose new documentation burdens and costs on industry or require new targeting or enforcement doctrines that are frankly duplicative of currently mandated obligations. Some of these concepts are embodied in pending legislation titled the "Textile Enforcement and Security Act (TESA)."

Layering on new requirements, increasing penalties, singling out "textiles" for priority targeting or making it more costly to import should not be embraced as the solution to better enforcement. Already, CBP has more staff devoted to the commercial enforcement of "textiles" than for commercial enforcement of virtually all other industries – combined.

Instead, the Subcommittee should develop legislation that will improve and expand the already solid partnership between CBP and the importing community – a principle already embedded in numerous doctrines such as informed compliance and reasonable care, and which has proven vital to the success of many programs such as the C-TPAT program.

This testimony outlines many of the concerns of AAFA members as well as outlines proposals that could address these concerns as well as other issues important to AAFA members. We respectfully urge the Subcommittee to consider the following concerns and suggestions as the Subcommittee develops legislation to reauthorize and reform CBP and its operations.

CBP Documentation Requirements – A Major Obstacle to the Success of FTAs

AAFA believes that the tremendous risks and significant burdens of CBP's current paperwork and documentation requirements for apparel and textile goods under free trade agreements (FTAs) (or preferential trade programs) represent the biggest single impediment to growing the apparel and textile trade under the FTAs. These requirements also represent a good example of the issues described in the previous section.

When making claims for preferential tariff treatment of textiles and apparel under an FTA (or preferential trade program), importers are required to provide origin conferring documentation upon request to U.S. Customs and Border Protection (CBP). The paperwork burden for preferential claims is tremendous, in most cases requiring in the range of 100 unique documents for *each garment style* (or sku) contained in the entry. These excessive documentation and paperwork requirements appear to be unique only to apparel and textile goods importers and not to importers of other consumer goods.

These documents must be able to clearly demonstrate that each garment style qualifies for preferential treatment, or the importer risks denial of the preference claim (including potentially all prior claims previously made, and all future claims for that FTA). All submitted documents must demonstrate a direct correlation of the materials or components to the finished garment by way of style numbers, fabric type and construction. Documents are required to be in English, or accompanied with an English translation, regardless of the origin of the documents, and paper copies must be stored in two locations—at the overseas factory and with the importer. If there is an error in the documentation, CBP may consider the entry to be a case of transshipment.

Because of the potential impact to U.S. importers, significant time and resources must be allocated to preparing the documents. Due to the sheer volume of the documents that must be provided, a verification for one entry can involve numerous back and forth discussions that last several months.

Appendix A contains a sample list of the various documents required verify a preference claim for apparel and textiles under most FTAs and preferential trade programs.

This process is derived from the guidance CBP has provided to the trade on submissions of apparel and textile goods under various FTAs and trade preference programs. *Appendix B* contains an example of that guidance (for CAFTA-DR in this case).

Regrettably, even this painstaking, time-consuming, and burdensome process does not provide any guarantees that an importer's shipments won't be held or subject to CF-28s or audits. To the contrary, apparel and textile goods shipments under FTAs and preferential trade programs are subject to a significantly higher risk of CF-28s and other inspections than apparel and textile good shipments from any other region of the world.

The documentation and paperwork burden required for these verifications can only be described as onerous. *Appendix C* contains pictures from two different angles of an example of the paperwork required in response to one such CBP verification. Please note that these pictures don't even include the timecards or tickets that are also required for these verifications. This volume of paperwork is the norm, and not the exception.

Moreover, each CBP port addresses the CF-28 response differently and passing review in one port does not mean the same shipment with the same documentation would pass verification in another CBP port. Indeed, some ports contradict the others.

And this documentation morass has very real, and very devastating, consequences for apparel and textile goods importers. CBP considers an error in the documentation a case of transshipment. As such, any documentation error in the documentation for apparel and textile goods shipments under CAFTA-DR is subject to stronger penalties than other entry errors, up to and including banning an importer from participation in the FTA program.

Automation – Full Funding and Completion of ACE is Crucial, but Automating Apparel & Textile Documentation Requirements is Critical

AAFA applauds the tremendous strides CBP has made over the last decade in moving all documentation requirements to an electronic interface. We support full funding to ensure completion of the Automated Commercial Environment (ACE) system as a means to complete this necessary and critical transition.

Regrettably, the documentation required apparel and textiles submissions under FTAs and preferential trade programs (as described in the previous section) are not electronic. Instead, every submission must be made available in hard copy (paper) format. Further, this documentation must be maintained not only by the importer, but a second copy (again in paper format), must also be maintained by the supplier factory in the FTA partner country.

Moving from Onerous Documentation to Account Management

Core to the issues described above is that CBP manages its enforcement of this trade on a shipment by shipment basis rather than through account management. The absence of the account perspective means that extensive documentation is required for each shipment rather than the trade pattern, posing burdens on the U.S. exporter, the producer, the U.S. importer, the regulatory agencies, and the ports.

This is particularly troubling given that many apparel companies, particularly those operating in the CAFTA-DR region, rely upon a supply chain that has consistent suppliers and a predictive pattern of trade. If this supply chain cycle was governed by an account structure, CBP and the trade could harmonize those predictive abilities to encourage U.S. exports and not burden the trade.

Moreover, existing paperwork requirements are not well-suited to address fraud issues, which is the stated purpose of these burdensome documentation requirements. In fact, one of the most well-known fraud cases associated with CAFTA-DR deals with a presumed supplier company. Yet the enforcement tools that CBP uses, as expressed through CBP's documentation requirements, are focused on a different part of the supply chain entirely – the importer. This focus often gives CBP only an indirect

ability to address the real problems with fraud while saddling potential enforcement partners of CBP – the informed importer exercising due care – with extra and unnecessary costs.

One Way to Move Forward - Apparel & Footwear Should be the Next CBP “Centers of Excellence”

By requiring that CBP make apparel and footwear their next “Centers of Excellence,” the Subcommittee can ensure that CBP makes significant strides in addressing many of the concerns raised in the previous sections– transparency, education, consistent enforcement, and cooperation with the trade – that are enabled by the holistic approach and the account management style of operations that are the core tenets of the Centers. The Centers of Excellence will make CBP more effective in both commercial and criminal enforcement by enabling CBP to focus its limited resources on targeting bad actors, instead of wasting critical resources on the assumption that all entries, regardless of who makes those entries, could be potentially bad. This, in turn would hopefully begin to move CBP away from the current focus on documentation and paperwork requirements.

Protecting Intellectual Property Rights (IPR)

Counterfeiting is a major problem for the U.S. apparel and footwear industry. Footwear, apparel, and fashion accessories consistently rank among the top 5 counterfeit goods seized by CBP every year.

Not only do fake goods pose a significant threat to public health and safety, these fakes steal jobs from hardworking American families, rob U.S. apparel and footwear companies of their brand reputation and deprive the U.S. government of valid tax revenues.

CBP stands at the front line of this war against counterfeits.

Therefore, we urge the subcommittee to make permanent a provision approved by Congress at the end of last year that authorizes and enables CBP to share information with rightsholders regarding suspected counterfeit product imports.

The Use of Security Data for Commercial Targeting

As you know, the *Trade Act of 2002* established a firewall between commercial and security data. Specifically, the act provides that security data is to be used exclusively for ensuring cargo safety and security. Some have advocated for removal of this firewall, particularly in light of CBP’s implementation of the Importer Security Filing (ISF), otherwise known as “10 + 2.”

The trade community advocated strongly for the firewall in 2002, as there are many differences between security data and commercial data including timing, potential for change in terms of sale in transit, identity of the filing entity and the standard of care.

Further, as noted previously, the AAFA fears that, without a clear firewall, security data could be used for “commercial enforcement” to help protect, or increase, the revenue generated from the high import tariffs imposed on our industry. The AAFA is concerned that CBP officials in certain ports could compare ISFs and entry forms and then fine companies for simple and unintended errors or discrepancies between the two sets of documents in what essentially could be a game of “Gotcha!” Even worse, the discrepancies could be used as a reason to hold shipments for “further investigation,” something our industry already experiences on a much higher than average basis due to our industry’s revenue implications.

However, the U.S. apparel and footwear industries recognize the value in using this security data for enhanced targeting in certain specific areas. Further, modification of the firewall should not be an impediment to implementing other priorities such as creating apparel and footwear Centers of

Excellence or offering tangible benefits for security investments like C-TPAT so long as the enforcement firewall remains in place.

If it is determined that the information could enhance commercial targeting in certain areas, like intellectual property rights (IPR) or product safety, we could support adding, through a so-called “positive list” approach, the use of security data for specific commercial targeting needs instead of removing the firewall as a whole. For example, if the use of ISF data is deemed crucial to improving CBP’s IPR enforcement capabilities, an issue important to AAFA members, the firewall could be modified to allow CBP to use ISF data specifically for IPR enforcement purposes.

Maintaining the enforcement firewall while permitting the use of 10+2 data for specific commercial targeting purposes would honor the agreement made to manufacturers in 2002 and would allow CBP to improve its commercial targeting capabilities in certain, specific areas when necessary.

Informal Entry

We urge the Subcommittee to make permanent CBP’s recent proposal to increase the value of the shipment allowed under informal entry and to remove the restriction on the ability to use informal entry for apparel, footwear, travel goods, and other fashion accessories.

The proposed rulemaking would benefit apparel and footwear companies of all sizes, particularly small and medium-sized (SME) apparel and footwear firms. Increasing the value and allowing apparel, footwear, and fashion accessories to benefit from informal entry will simplify entry requirements and reduce transaction costs for apparel and footwear companies, particularly SMEs, making them more competitive in the global economy.

Further, we urge the subcommittee to explore the concept of a mechanism that would automatically raise the limit under informal entry in response to changing market conditions.

Conclusion

Again, we hope that the subcommittee takes into account the important concerns and views of the AAFA and its members when it develops legislation to reform and reauthorize CBP.

Thank you for your time and consideration in this matter.

Please contact Nate Herman at 703-797-9062 or by e-mail at nherman@wewear.org if you have any questions or would like additional information.

ATTACHMENTS

- Appendix A – CBP Documentation Requirements
- Appendix B – CBP Guidance on CAFTA-DR Documentation
- Appendix C – Pictures of Actual Set of Documents Required for a CBP CAFTA-DR Verification

Appendix A

DOCUMENTS NECESSARY TO VERIFY A PREFERENCE CLAIM UNDER AN FTA OR PREFERENTIAL TRADE PROGRAM

Please find below is a sample list (from CAFTA-DR) of the documentation that is necessary to verify a preference claim under an FTA or preferential trade program. There are 100 unique documents required for *each garment style* (or sku) contained in an entry.

Entry Documents

Entry Document (7501)
Textile Certificate of Origin
Multiple Country Textile Declaration (if available/applicable)
Purchase orders (for merchandise)
Invoices (for merchandise)
Proof of Payment
Bill of Lading
Packing List

Yarn Acquisition

Purchase Orders (for raw materials including fibers, threads, yarns and fabrics)
Invoices (raw materials including fibers, threads, yarns and fabrics)
Proof of Payment
Shipping Documentation, including bills of lading, delivery receipts, packing lists for raw materials and components.
Affidavits for Yarns from the Manufacturer
Affidavits for Yarns from the Supplier

Knitting Operations

Purchase Order for fabric
Invoice for Fabric
Proof of Payment
Shipping Documentation, including bills of lading, delivery receipts, packing lists for raw materials and components.
Knitting Records
Employee Time Cards
Employee Payment Records
Affidavits for Fabric from the Manufacturer
Affidavits for Fabric from the Supplier

Cutting Operations

Cutting records and/or production summaries (including work performed by subcontractors)
Employee Time Cards
Employee Payment Records

Sewing Operations

Sewing records
Employee Time Cards
Employee Payment Records

Finishing Operations

Daily Finishing Records
Employee Time Cards
Employee Payment Records

Inspection Reports

In-line inspection reports
Final inspection reports

Factory Information

Factory Profile

Product Information

Bill of Materials for the Garment
Fabric Consumption (this is not so common anymore, but we've had to produce this in the past)
Affidavits for thread from the Manufacturer
Affidavits for thread from the Supplier
Proof of Payment
Shipping Documentation, including bills of lading, delivery receipts, packing lists for raw materials and components

October 10, 2007

CMP-1 OT:TPP:TE NM

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
OFFICE OF FIELD OPERATIONS

FROM: Executive Director, Trade Policy and Programs
Office of International Trade

SUBJECT: TBT-07-019 Documents Used to Verify Free Trade
Agreement and Legislated Trade Program Claims for
Textiles and Wearing Apparel

BACKGROUND:

Customs and Border Protection (CBP) is tasked with the enforcement of Free Trade Agreements (FTAs) and legislated trade programs that govern the importation of textiles and wearing apparel into the United States. Upon the request of CBP, importers who make trade preference claims for textiles and wearing apparel must provide sufficient records to substantiate their claims that goods meet the preference rule of origin for a country that has a FTA or legislated trade program.

Whether an agreement requires the use of yarn or fabric originating in the United States or in the region or country of the agreement, or U.S. cut or knit-to-shape components, determines the types of records importers must submit to substantiate a claim. When requested by CBP, the primary documents importers must submit to confirm each raw material source are indicated below.

The following requirements hold whether U.S. materials or regional materials are used:

1. An affidavit completed by a party having direct knowledge of the yarn or fabric formation is necessary to substantiate the origin claim.
 - a. Such an affidavit (or declaration) should identify the factory that produced the yarn or fabric, giving the full name and address.
 - The address of the actual production facility, not a corporate office or post office box number, is required.
 - Someone at that location must make the declaration.
 - The contact person's name, phone number, and fax number must be legibly printed on the affidavit.

- b. Affidavits claiming the yarn was produced in the United States will not be accepted if the party that produced the fabric in question did not also produce the yarn. The yarn producer must complete the affidavit.
 - c. Affidavits will not be accepted from converters or dyers who are not responsible for the actual production of the yarn or fabric.
2. The affidavit should have a description of the goods, such as fiber content, yarn count and fabric type, as well as some identifying characteristics, such as an invoice or order number.
 - a. If the importer purchased the yarn or fabric, he should provide a commercial invoice for the material.
 - b. If the fabric is a U.S. product, the importer should provide the bill of lading showing its movement from the United States to the beneficiary country.
3. A blanket certificate of origin should contain a description of the product, and the fabric description must not vary among the orders covered by the blanket certificate reference or contract number.

Documents to Support Claims Involving Agreements/Groupings Requiring U.S. Yarn or Fabric

1. Records demonstrating that the imported merchandise was produced using U.S. formed yarn or fabric, or U.S. cut or knit-to-shape components. Such records include certificates of origin, purchase orders, invoices, delivery notices, and, in some cases, records of yarn, fabric, or panel formation from the actual producer of a component.
2. Transportation and export records (e.g., bills of lading).
3. Entry documents showing movement of the inputs into the regional country of final production.

Documents to Support Claims Involving Agreements/Groupings Requiring Regional Yarn or Fabric

1. Records demonstrating that a party to the transaction sourced regionally formed yarn, fabric, or cut or knit-to-shape components clearly dedicated to the final imported merchandise. Such records include purchase orders, invoices, delivery notices, etc. These documents should demonstrate a direct correlation of the materials or components to the finished good by way of style numbers, fabric type and construction, or other means.
2. Transportation and export records (e.g., bills of lading) from the regional country of origin of the yarn or fabric to the regional country of final production.
3. Entry documents showing movement of the inputs into the regional country of final production.
4. Documents showing movement and delivery of inputs within the regional country of final production.

ACTION:

When making claims for preferential tariff treatment of textiles and wearing apparel under a FTA or legislated trade program, upon the request of CBP, importers must provide documents as indicated above. These documents must demonstrate that the goods qualify for the preferential treatment. If documents cannot be presented to substantiate the claim, the preference claim will be denied and all prior claims may be reviewed for sufficiency.

Please pass this memorandum to Port Directors, Assistant Port Directors, Import Specialists, CBP Officers, Entry Specialists, Brokers, Importers and other interested parties.

INFORMATION:

For additional information, please contact Ms. Nancy Mondich at 202-863-6524, Ms. Jacqueline Sprungle at 202-863-6517, Ms. Susan Thomas at 202-863-6516, or Mr. Robert Abels at 202-863-6503.

/s/

Brenda B. Smith

Appendix C

