



June 5, 2010

The Honorable John Tanner  
Chair  
Subcommittee on Trade  
Ways and Means Committee  
U.S. House of Representatives  
Washington, DC

**RE: Written Testimony for House Ways and Means Trade Subcommittee  
Hearing on “Customs Trade Facilitation and Enforcement in a Secure  
Environment,” May 20, 2010**

Dear Chairman Tanner:

Thank you for providing us this opportunity to submit testimony in relation to the hearing cited above. I 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. Our members produce and market apparel and footwear throughout the United States and the world. In short, our 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 6.5 percent of all U.S. imports in 2009, these products accounted for over half (50.7 percent) of all import duties collected by U.S. Customs and Border Protection (CBP) during the year – to the tune of \$10.7 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 the AAFA’s members in particular.

At the outset, I would like to reiterate the 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 97 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 without full consideration of the measures' economic implications.

Therefore, I respectfully urge you to consider the following concerns and suggestions as your subcommittee develops legislation to reauthorize and reform CBP and its operations.

Along those lines, I would like to express the AAFA's strong support for all of the recommendations outlined in the oral and written testimony submitted by Frank Vargo of the National Association of Manufacturers (NAM). The AAFA is an active member of the Customs and Border Coalition (CBC), for which the NAM serves as the secretariat. Mr. Vargo's testimony encapsulates many of the concerns of AAFA members and the larger business community and offers recommendations that the AAFA feels successfully strike the right balance between protecting our borders and ensuring the free flow of trade.

In this testimony, I would like to focus on four areas of particular concern to AAFA members:

**1. Improve Enforcement Through Transparency, Cooperation & Education, Not New Requirements or New "Targeting"**

Some groups unsatisfied with the pace of globalization react by asking 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. 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.

Rather, we need to make sure that we have a solid partnership with our importing community – a principle already embedded in numerous doctrines such as informed compliance and reasonable care, which have proven vital to the success of many programs such as the C-TPAT program.

It is also absolutely critical that CBP devotes proper energy and resources to education and training of the trade, their own employees and foreign counterparts. For example, in the textile and apparel industry (and to a lesser degree in the footwear industry), the proliferation of complicated rules of origin along with the already extensive documentation and record keeping requirements invite confusion and misunderstanding, even among CBP officials. Recent CBP proposals that suddenly sought to invalidate key rulings have only added to this confusion. Smart, risk based enforcement depends on all the key stakeholders being on the same page to ensure that everybody has a common understanding of the rules and the ability to properly comply with them.

With special regard to textiles and apparel, it is important to make another point. As noted previously, the high tariffs that are still imposed on U.S. imports of textiles and apparel mean that 50.7 percent of all tariff revenues are generated by chapters 50 through 65, even though only 6.5 percent of the trade can be attributed to this industry. Under the rubric of enforcement to help protect revenue generated from these high tariffs, some are proposing new requirements or new “targeting” that will ultimately increase costs and burdens to legitimate importers. Such provisions should only be explored if they do not inhibit legal trade, create WTO inconsistencies or drive up the costs of using our preference and free trade agreement programs. Domestic textile manufacturers have the right to expect fair and robust enforcement. However, that enforcement should not be done in a way that adds unnecessary costs or undermines other trade goals. Here, we also believe smart enforcement involves working with the trade community and ensuring that all players are properly educated and trained on their roles, rights and responsibilities.

## **2. 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. There are some in Congress and in the Federal government who are advocating 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 has already regrettably experienced previously 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 account management or 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.

### **3. Eliminate Unnecessary Rulemaking & Make Commonsense Changes**

CBP has proposed a number of regulations in the past few years with no input from AAFA members or the larger business community. Yet, in all cases, these proposals would change longstanding and accepted rules that would have a significant, negative impact on the U.S. apparel and footwear industry, and the larger business community, without any demonstrable benefits for national security, trade facilitation or customs administration. At the same time, CBP could implement simple fixes on specific issues that would facilitate trade, and encourage the use of U.S. inputs.

I would like to highlight four specific proposals/issues here:

- a. **Make Permanent the First Sale Rule:** In 2008, CBP proposed to revoke the First Sale rule without consulting Congress or the business community, overturning 20 years of legal precedent. With this subcommittee’s leadership, such action was delayed because of language included in the Farm Bill prohibiting CBP from implementing any change to the First Sale Rule until January 1, 2011. The U.S. apparel and footwear industry is by far the largest user of first sale. AAFA members depend on predictable rules and we are concerned that revocation may be contemplated again. We ask this subcommittee consider making the First Sale Rule permanent to ensure that CBP does not attempt to revoke this long-standing policy again.
- b. **Formal Withdrawal of the Notice of Proposed Rule Making (NPRM) on Uniform Rules of Origin:** AAFA members encourage this subcommittee to work with CBP to formally withdraw the pending NPRM on Uniform Rules of Origin be withdrawn. The NPRM seeks to implement a unilateral change in the

process for determining country of origin that will create immense uncertainty for the U.S. apparel and footwear industry by calling countless thousands of CBP classification rulings into question. Any changes to those rulings could cost AAFA members untold millions in unexpected tariff obligations. This is of particular concern in our industry where rulings on tariff classifications could mean the difference between a 6 percent duty, and a 67.5 percent duty. Yet, throughout this process, CBP has failed to demonstrate the need for such a draconian change. Now is not the time to increase the cost of doing business and decrease the competitiveness of American companies.

- c. **Formal Withdrawal of the Notice of Proposed Rule Making (NPRM) on 9801:** 9801 is a program that promotes the use of U.S. inputs around the world. Currently, CBP allows products that utilize U.S. inputs to be repaired overseas and returned to the United States. Only the value of repair is dutiable. The duty rate is not changed. CBP's proposal would make the whole value of the product dutiable.
- d. **Use of U.S. Yarns and Fabrics under 9802:** 9802 is a program that promotes the use of U.S. inputs around the world. Currently, when goods manufactured overseas that utilize certain U.S. inputs are then imported into the United States, CBP allows the importer to deduct the value of the U.S. inputs from the dutiable value. The duty rate is not changed, but the value is adjusted to account for the value of U.S. inputs. However, certain U.S. inputs – particularly U.S. yarns and U.S. fabrics - are not afforded this duty benefit because CBP has determined that the U.S. inputs in this case undergo too much manufacturing overseas. The AAFA supports a revision to the 9802 program that takes into account the use of U.S. yarns and fabrics in apparel, textiles and textile products manufactured overseas to encourage the export of U.S.-made yarns and fabrics and make them more competitive in the global market.

#### **4. Protecting Intellectual Property Rights (IPR)**

Counterfeiting is a major problem for the U.S. apparel and footwear industry. For four years running, fake footwear has been the number one counterfeit good seized by CBP. Fashion accessories and apparel rank third and fourth, respectively.

Not only do fake goods pose a significant threat to public health, 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.

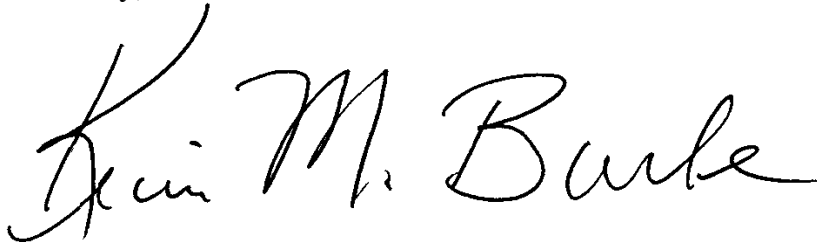
For this reason, AAFA strongly support all of the specific recommendations on IPR outlined in the oral and written testimony submitted by Frank Vargo of the National Association of Manufacturers (NAM).

Finally, we understand that certain provisions of recently introduced legislation regarding CBP's textile and apparel enforcement are being considered for incorporation into any possible customs reauthorization legislation being developed by the subcommittee. We would appreciate the opportunity to reserve the right to provide the subcommittee detailed comments on that specific legislation in the next few weeks.

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

Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive, flowing style with a large initial 'K'.

Kevin M. Burke  
President & CEO