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September 19, 2012

Secretary
United States International Trade Commission
500 E Street SW
Washington, DC 20436

RE: Investigation Nos. TA-131-036 and TA-2104-028 - U.S.-Trans-Pacific Partnership Free Trade Agreement Including Canada and Mexico: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Imports

To Whom It May Concern:

On behalf of the American Apparel & Footwear Association (AAFA), I am writing to state that Mexico's and Canada's participation in the proposed Trans-Pacific Partnership (TPP) Free Trade Agreement will have a positive economic effect on the U.S. apparel and footwear industry, U.S. workers, U.S. consumers, and the U.S. economy. However, this positive economic effect can only occur if Mexico's and Canada's participation in the TPP is used as an opportunity to address critical supply chain issues that are severely impacting the normally mutually-beneficial apparel, footwear, and textile relationship between the United States and Mexico and between the United States and Canada. Further, this positive economic effect on the United States, its workers, and its consumers can only be achieved if Mexico's and Canada's participation in the TPP is viewed as an opportunity for a much-needed update to the current North American Free Trade Agreement (NAFTA), to bring the agreement in line with today's market realities.

The American Apparel & Footwear Association (AAFA) is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Our membership consists of 350 American companies—both large and small—which represent one of the largest consumer segments in the United States. Our members also produce, market, and sell apparel and footwear in virtually every country around the world, including Mexico and Canada.

The U.S. apparel and footwear industry directly employs more than four million U.S. workers. These important jobs include industry executives, textile mill workers, logistics specialists, compliance managers, sourcing managers, wholesalers, retail floor associates, technical designers, and marketing professionals, just to name a few. The industry also supports countless other U.S. industries, like the more than 37,000 transportation jobs it requires to move products from the port to the sales floor and the 235,000 dry cleaning jobs required to maintain and protect the industry's quality product. The U.S. apparel and footwear industry represents more than three percent of the entire U.S. workforce.

Mexico and Canada are both strong partners to many U.S. apparel, footwear, and textile, manufacturers, brands, and retailers. This relationship supports thousands of U.S. jobs. AAFA continues to take steps to encourage a strengthened economic relationship between the United States, Mexico, and Canada. Last year, AAFA joined other associations in urging the U.S. Department of Transportation to restart the cross-border long-haul trucking pilot program between the United States and Mexico and continue to urge that it be made permanent. For Canada, AAFA participates in and supports many business and government-based cross border initiatives. AAFA believes the ability to move product quickly, safely, and efficiently across the border is critical to the future success of the apparel, footwear, and textile partnerships between the three countries.

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AAFA has consistently supported Mexico's and Canada's participation in the Trans-Pacific Partnership (TPP) Free Trade Agreement. Nevertheless, while the U.S.-Mexico and the U.S.-Canada apparel, footwear, and textile partnership remains relatively strong and healthy today, a number of critical supply chain issues must be addressed in order to transform Mexico's and Canada's participation in the TPP into a positive economic benefit for the U.S. apparel and footwear industry, U.S. workers, U.S. consumers, and the U.S. economy.

Critical Supply Chain Issues Must be Addressed When Mexico and Canada Join the TPP

Mexico

Mexico over the last two years has imposed burdensome import documentation requirements to substantiate preference claims under NAFTA. There have been multiple instances over the last two years where Mexican authorities have performed audits on American textile companies and sought documentation well in excess of what is required under NAFTA. While AAFA understands the need for proper enforcement, this zealotry, by exceeding the scope of the requirements, has severely damaged the ability of U.S. textile exporters to ship to Mexico under NAFTA.

After many complaints from American businesses and the United States Department of Commerce regarding these outlandish requests for documentation, representatives of Mexico's revenue body—the *Servicio de Administración Tributaria* (SAT)—promised to make several changes to their auditing process. The promised changes would supposedly lessen paperwork and other burdens on U.S. textile mills and apparel companies to comply with the audits. This would be a welcome move within our industry.

Regrettably, however, AAFA members have not seen any of the promised changes. In addition, assurances were made to U.S. government officials that details of the new auditing process would be published on the SAT website in February 2012, over 7 months ago, but this information also has yet to be provided.

Instead, several AAFA members are still struggling with the burdensome and arbitrary SAT audits. These companies are not seeing any relief nor are they being provided information on how to successfully comply with SAT's requirements.

Frankly, we are dumbfounded that this issue has not been fully resolved. Notwithstanding our strong support for Mexico's participation in the TPP, Mexico's continued pursuit of these burdensome audits, given the likelihood that they are in violation of their NAFTA commitments, raises serious questions as to whether the Mexican Government is fully prepared to take on commitments necessary to make it a full partner in the TPP.

Furthermore, AAFA remains concerned with the Mexican government's history of imposing unjustified and/or WTO-illegal restraints on apparel, footwear, and textile imports through such mechanisms as dumping or safeguard duties or new customs documentation requirements or procedures. AAFA applauds Mexico for achieving a strong first step in addressing this issue when it removed, as scheduled, longstanding safeguard duties on imports of apparel and footwear from China in December 2011.

Earlier this year, AAFA learned of an agreement made between Mexico and China that would avoid a re-imposition of safeguard duties and instead created a solution that is beneficial for all parties involved. Many AAFA members source footwear in China for the Mexican market and therefore have a strong interest in this agreement. However, details of the agreement did not surface until several months after the agreement took effect and there has still been very little communication from the Mexican government on what foreign companies must do to satisfy the agreement's strict requirements. AAFA has asked the Mexican Ministry of Economy to provide AAFA and our members with clear information about this agreement but we have not yet received an answer.

Further, AAFA has just learned that Mexico has imposed a reference pricing scheme on imports of finished apparel. However, Mexico has not published any rule, regulation, or list. In fact, no one outside of Mexico's SAT even has access to the list, making the imposition of this illegal and unjustified reference pricing scheme even more burdensome, arbitrary, and capricious.

Instead, Mexican Secretary of Economy Bruno Ferrari has made several public statements that Mexico may still re-impose safeguard duties on apparel and footwear in the future. This continued threat creates an unwelcoming environment for U.S. businesses and an unstable trade relationship.

Finally, Mexico's inclusion in the TPP offers a great opportunity to further one of the unrealized goals of NAFTA, the much needed harmonization of regulations across North America, from labeling and customs requirements to product safety regulations and enforcement.

As with any long-term relationship, there are many other outstanding issues between the two countries which impact this important supply chain. As it approaches Mexico's participation in the TPP, we urge the U.S. government to use as its guide its own annual *National Trade Estimate* reports on Mexico from the last 10 years.

Canada

Our industry is subject to a plethora of regulations that are promulgated in the name of "public safety" but amount to nothing more than a trade barrier. The best example of these new regulations in our industry comes from Canada. The Upholstered and Stuffed Articles regulations are actually maintained not by the Canadian government, but by three Canadian provinces (Quebec, Ontario, Manitoba). However, owing to its recognition within the Canadian Agreement on Internal Trade and the nature of modern distribution systems, they represent a de facto national standard, one which is of great concern to our industry.

These regulations require the registration of factories and the payment of annual fees to one or more provincial agencies. While historically, they may have been considered as a means of ensuring public safety, because these regulations refer to no objective technical standard they have no current purpose in terms of product safety. More importantly, the Canada *Consumer Product Safety Act*, which was implemented last year, has brought Canada's product safety regime into line with equivalent U.S. legislation, rendering these provincial regulations completely unnecessary.

On a practical level, because the terms "padding" and "stuffing" are loosely defined, the applicability of these regulations to specific products is arbitrary and punitive. Simply put, our members companies are continually frustrated in efforts to clarify whether these regulations apply to our products.

On a related note, we urge the U.S. government to remain vigilant to ensure that implementation of Canada's *Consumer Product Safety Act* continues to be transparent and risk-based.

In addition, it should also be noted that imported products (from the United States or any other country) are discriminated against by these regulations. Canadian manufacturers have the ability to register their products in a single province while imported products must be registered in three separate jurisdictions (and pay three registration fees). I urge the U.S. government aggressively pursue resolution of this critical issue and put other countries on notice that regulations in the name of "public safety" must be transparent, non-discriminatory, and scientifically-based.

As with any long-term relationship, there are many other outstanding issues between the two countries that impact this important supply chain. As it approaches Canada's participation in the TPP, we urge the U.S. government to use as its guide its own annual *National Trade Estimates* reports on Canada over the last 10 years.

TPP – What Should a 21st Century Agreement Look Like? Not Like NAFTA!

In order to support today's global apparel and footwear value chains, and the millions of U.S. workers who depend on them, the TPP must be a "21st century agreement." Again, with Mexico's and Canada's participation in the TPP, a TPP that provides a positive economic effect on the United States requires a sharp break with the rules embodied in NAFTA. While NAFTA was "state of the art" in 1994, NAFTA does not reflect the realities of today's global economy. Moreover, NAFTA did not contain any of the mechanisms necessary to make it a "living" agreement. To put this in perspective, is anyone today still using the "state of the art" computer they had on their desk in 1992 (when NAFTA was signed)?

So, what do we mean by a "21st century agreement?"

For footwear, this means building upon the successful approach embraced in all of the free trade agreements negotiated over the last decade. For footwear no longer made in the United States, the vast majority of the U.S. footwear market, this means immediate and reciprocal duty-free access under the most flexible rules of origin possible. For those footwear items still produced in the United States, the TPP agreement should recognize this fact and incorporate rules of origin and duty phase-out schedules accordingly. In most recent FTAs, for example, these “sensitive” items were subject to very restrictive rules of origin and very long, back-loaded, duty phase-out schedules.

For travel goods, this means building upon the successful approach embraced in CAFTA-DR and the KORUSFTA, immediate and reciprocal duty-free access under the most flexible rules of origin possible.

For apparel, this means breaking with the 20th century paradigm of “yarn-forward” rules of origin, which would require that all of the materials that go into a garment originate and be assembled in a TPP country to receive duty-free treatment. “Yarn-forward” ignores the realities of today’s global value chains.

Just as important, “yarn-forward” has failed to provide any of the benefits its proponents claim for U.S. manufacturers and U.S. jobs. “Yarn-forward” is an “**all or nothing**” approach that requires all yarn and fabric, as well as all linings, sewing thread, elastomers and other trims, to be made in the TPP region. If any one of these inputs does not originate in the region, the whole garment is disqualified from duty benefits. For example, if all of the yarn and fabric is U.S.-made, but the sewing thread comes from Korea, the entire garment loses all duty benefits. Past U.S. FTAs with the TPP countries have shown that such a “yarn-forward” or “all or nothing” approach does not spur new U.S. exports of yarns and fabrics. Instead, combined U.S. yarn and fabric exports to these 4 U.S. FTA partners—Australia, Chile, Peru, and Singapore—have remained virtually unchanged over the last decade. On the other hand, U.S. yarn and fabric exports to countries that are not subject to these “yarn-forward” “all or nothing” rules, but have a vibrant apparel industry, like Vietnam or Malaysia, or even China, have skyrocketed over the last decade.

Instead, the TPP should embrace more flexible and simple rules of origin for apparel. Specifically, the rules should:

- Base the rule of origin (ROO) for apparel on either a change in tariff heading (CTH) or a regional value-content (RVC) requirement. A change in tariff heading would require any product in an apparel chapter (chapters 61 and 62) to be transformed within the region from any heading outside of that chapter. With an RVC rule, the value of those processes (and the inputs they create) within the territories must account for a minimum percent [35%] of the total value of the garment with a specific value calculation;
- Limit tougher product-specific ROOs to sensitive products when necessary and appropriate, meaning there is data establishing sufficient availability of inputs in commercial quantities within the TPP territory;
- Allow outward processing of intermediary products and not penalize products that use TPP-country inputs;
- Harmonize the ROOs for all TPP countries, including those that currently have FTAs with the United States;
- Guarantee the “ability to cumulate” among all TPP partner countries to facilitate regional integration;
- Establish a transparent and commercially meaningful “Commercial Availability” [Short Supply] process; and,
- Create a process to allow “cumulation” with other countries that have FTAs with all TPP countries.

Further, all apparel should receive immediate and reciprocal duty-free entry.

Combining such provisions with measures to facilitate Customs and expand cross border trade would magnify the gains associated with the TPP while reducing costs that erode the value of the NAFTA. As the Commission reviews the inclusion of Mexico and Canada in the TPP, we would encourage an approach that recognizes that onerous rules of origin result in less utilization of the agreement, which diminishes the gains under the agreement. This result is certainly consistent with industry experience, where less

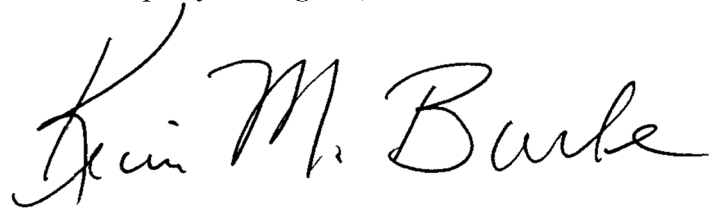
than 20 percent of apparel imports use preferences (most of which contain onerous rules of origin) despite the explosion of preference programs and FTAs. It also reflects recent modeling by Peter Petri, Michael Plummer, and Fan Khai that draws upon research showing that under-utilization of FTAs is attributed to “administrative costs of utilization, the size of the reduction offered by the agreements, and the severity of the rules of origin.”¹

Conclusion

We believe the TPP can have a positive economic effect on the United States. The TPP can truly be a “win-win-win” for U.S. jobs, U.S. manufacturers, and the U.S. apparel and footwear industry, but only if the TPP is a “21st century agreement” that recognizes and embraces the realities of today’s global apparel and footwear value chains and the 4 million U.S. jobs dependent on it. Further, Mexico’s and Canada’s inclusion must be used to address important supply chain issues, such as fixing the current critical problems facing the U.S.-Mexico and the U.S.-Canada supply chains and modernizing NAFTA to reflect today’s global realities.

Thank you for your time and consideration in this matter. Please contact Nate Herman of my staff at 703-797-9062 or by e-mail at nherman@wewear.org if you have any questions or would like additional information.

Please accept my best regards,

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

Kevin M. Burke
President & CEO

¹ See: The TransPacific Partnership And Asian Pacific Integration: A Quantitative Assessment. Easts West Center Working Paper No. 119. November 24, 2011. P. 64.
http://www.usitc.gov/research_and_analysis/documents/petri-plummer-zhai%20EWC%20TPP%20WP%20oct11.pdf