October 4, 2010

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

RE: Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers and Reports on Sanitary and Phytosanitary and Standards-Related Foreign Trade Barriers (75 FR 47675; August 6, 2010)

To Whom It May Concern:

On behalf of the American Apparel & Footwear Association (AAFA), I am writing to submit comments for the U.S. government's *National Trade Estimate* report.

AAFA is the national trade association representing apparel, footwear and other sewn products companies, and their suppliers, which compete in the global market. AAFA's members produce, market, and sell apparel and footwear in virtually every country around the world.

I urge you to continue to work with the European Union as it implements its REACH regulations over the coming years. The mere act of requiring the registration of every single chemical used in products sold in Europe will impose dramatic costs on U.S. apparel and footwear brands, much less every other U.S. industry. Further, the development and implementation of REACH's Substances of Very High Concern (SVHC) is non-transparent and imposes essentially retroactive requirements and restrictions on chemicals in products that are already out on the market, not only for products going forward. At the very least, we hope that the implementation of this regulation will be transparent and based strictly on science.

We are very concerned about the new labeling rules that continue to proliferate regarding apparel, footwear, and travel goods. In this regard, we are pleased that the United States, along with the European Union, has proposed an ambitious labeling harmonization initiative in the World Trade Organization (WTO) as part of the Doha Round. We urge you to push hard for acceptance of this important proposal, which, when implemented, will restrain the ability of WTO member governments to issue arbitrary labeling regulations that impose unnecessary burdens on textile, apparel, and footwear companies.

Following along these lines, we also urge you to continue working with the U.S. Department of Commerce's Office of Textiles & Apparel (OTEXA) in identifying non-tariff barriers for inclusion in this edition of the *National Trade Estimates* report and determining important issues to address over the next year. OTEXA has assembled a fairly comprehensive list of labeling requirements that face not only U.S. textile and apparel firms around the world, but also U.S. footwear and travel goods firms.

The most recent poster child for the use of labeling as a trade barrier is Indonesia. On December 21, 2009, Indonesia's Ministry of Trade issued new regulations requiring all labeling on clothing, footwear and travel goods to be in Bahasa Indonesian. In most cases, the labels must contain information in Indonesian for not only the country of origin and the brand name, but also must include, in Indonesian, the name and address of the producer of the product. While troubling, these new rules were made even more complicated by the fact that timely notice to the World Trade Organization (WTO) – which would have provided industry an opportunity to comment or institute proper compliance actions – was not made.

At the same time, we are very concerned about the increasingly aggressive use of trade remedy laws against imports of apparel and footwear by a fast-growing number of countries. As I mentioned previously, U.S. apparel and footwear firms make and sell everywhere around the world, including selling clothes and shoes made in China, Vietnam and other Asian countries into Europe, Mexico, Brazil, India and other major markets around the world. These so-called "third country exports" support thousands of U.S. jobs, employing American workers in design, research and development, sourcing, marketing, sales and logistics. Therefore, we urge the U.S. government to give serious time and consideration to slowing the aggressive use of trade remedy laws not only against U.S.-made products, but also against U.S.-branded products.

Along those lines, I urge you to address Mexico's arbitrary use of trade remedy laws to close its market to footwear and apparel imported from China. Seven years ago, Mexico imposed dumping duties of 300 percent on footwear imports and 100-350 percent on apparel imports from China. Mexico agreed to eliminate those dumping duties at the end of 2007 as part of China's World Trade Organization (WTO) accession agreement in 2001. Instead, the Mexican government announced in an October 14, 2008 *Diario Oficial* notice that it will maintain dumping duties (albeit at a moderately lower level of around 100 percent) on most Mexican footwear and apparel imports from China for yet another four years. Further, many footwear items remain subject to a "reference pricing" scheme Again, most of this footwear and apparel is produced by U.S. brands, severely impacting their ability to sell into one of the largest consumer markets in Latin America. With less than 2 years remaining on these new restrictions, I encourage the U.S. government to request that the Mexican government re-affirm, in no uncertain terms, that it will follow through with its plan to remove all barriers to footwear and apparel imports at the end of 2011 and, more importantly, not to follow Ecuador's example *(see below)* and replace these expiring barriers with new barriers.

On another note, we have been deeply disappointed with the progress made to date on China's efforts to improve its Intellectual Property Rights (IPR) enforcement. U.S.

footwear and apparel brands have been subject to rampant counterfeiting in China, stalling our efforts to break into this important market. This problem even affects us in our home market – the United States. Every year, U.S. imports of counterfeit clothes and shoes from China top the list of counterfeit items seized by U.S. Customs. We estimate that these seizures represent only a small fraction of the total amount of counterfeit shoes and clothes entering the U.S. market. China must do more on IPR enforcement. Therefore, we strongly support the U.S. government's actions in taking China to WTO dispute settlement over lax IPR enforcement. We hope that the combination of the WTO cases and ongoing dialogue will resolve an issue that is so critical to our industry.

Moreover, in the past few years, AAFA members have expressed growing concern that the Chinese Patent and Trademark Office continues to deny long-standing and well-documented trademarks registrations. In fact, some AAFA members operating in China have seen trademark protection granted to Chinese applicants with similar marks. Without a registered trademark, brand owners are heavily handicapped in their anti-counterfeiting efforts in China. For example, the Chinese Government will not conduct raids without a registered Chinese trademark as proof of illicit activity. Similarly, the Chinese customs service will not take action against counterfeit exports unless the mark at issue is registered in China.

Finally, I urge you to work to ensure that Ecuador eliminates its continued draconian restrictions on U.S. apparel and footwear imports. As you know, on January 22, 2009, under the guise of an effort to improve its Balance of Payments, Ecuador imposed a $10 per pair duty (on top of normal duties) on all Ecuadorian imports of footwear. At the same time, Ecuador imposed a $12 per kilogram duty on all Ecuadorian imports of apparel. These measures effectively eliminated all access to the Ecuador market for U.S. apparel and footwear brands. The good news is that Ecuador, on July 23, 2010, did remove these "Balance of Payment" measures as promised. The bad news is that Ecuador replaced these measures with something almost as bad, if not worse. Ecuador instead has imposed a new "mixed" ad valorem and specific duty on all imports of footwear. The new rate is 10% + US $6 per pair duty on the FOB value of imported footwear. For apparel, Ecuador has established a new minimum pricing scheme to replace the "Balance of Payment" measures. For footwear, Ecuador claims that the new "mixed" duty meets their World Trade Organization (WTO) bound tariff rates for footwear, which are 30 percent. However, in the case of footwear based on our calculation, that would mean the FOB price for footwear entering Ecuador would have to be, at a minimum, US $30 per pair.

FOOTWEAR

First, the European Union will vote by March 2011 on whether to again extend its current anti-dumping duties on leather footwear imports from China and Vietnams. As with the deliberations that led to the imposition of the original anti-dumping duties and the led to the decision at the end of 2009 to extend the dumping duties for at least another 15 months, it is highly likely that any proposed extension will fail to follow the Commission's own trade remedy rules, but will again be driven purely by political considerations in direct contravention to those rules. I urge the United States to discuss

this issue with the European Union, as it is a critical issue for U.S. footwear brands (as described above).

Second, I urge you to continue including, as has been the case since the report's inception in 1988, a strong reference to an issue of particular concern to AAFA's footwear members – Japan's continued tariff rate quota (TRQ) restricting imports of leather footwear. Further, I strongly encourage the U.S. government to take concrete action on this issue. Despite the efforts of AAFA as well as the U.S. government over the last few years to address this issue, Japan still maintains an extremely restrictive TRQ on imports of leather footwear. This TRQ hurts Japanese consumers and U.S. footwear brands alike and is a clear and longstanding violation of WTO rules and norms.

Third, I urge you to address Argentina's extensive import restrictions on footwear. Argentina currently imposes import quotas, limiting imports into Argentina for each company to the same level as the previous year. There are two quota schedules. One for Asian sourced footwear, the other for MERCOSUR-sourced footwear (Brazil), with the Asian quota much more restrictive. Usually, import licenses are granted within 60 days, but now the Argentine government is taking 90 to 150 days. This is severely limiting the number of pairs of footwear a company can import and preventing growth in imports from China, Vietnam and other countries. Further, Argentina announced March 17 that it has established a minimum FOB price for virtually all Argentine imports of footwear from China. The minimum FOB price is $13.38 (U.S. Dollars). This minimum price will remain in place for five years (until March 2015). Again, while many of these shoes are made in Asia, they are made in Asia by U.S. brands. As a result, these rules essentially close the Argentine market to U.S. footwear brands.

Fourth, I urge you to express concern to your Brazilian counterparts for ignoring international trading rules when it inappropriately used trade remedy laws to impose provisional dumping duties of US $13.85 per pair on virtually all Brazilian imports of Chinese footwear. The dumping duties entered into force on March 5, 2010 and will remain in place for at least five years. This decision seems clearly driven by politics, not the tenets of trade remedy law, after Brazil was unable to continue to incorrectly use safeguard provisions against imports from China after it became subject to international criticism.

Further on Brazil, the country in recent years has imposed non-automatic import licenses and certificates of origin requirements on non-MERCOSUR footwear imports. Moreover, we have just learned that Brazil is now requiring that footwear imports must be imported directly from the footwear's country of origin, even if the footwear has the correct certificate of origin. The only intention of these schemes is to make it next to impossible to sell U.S. footwear brands into the Brazilian market, which is the largest in Latin America.

APPAREL

We remain deeply concerned about overly burdensome documentation requirements in Argentina, and in other Latin American countries, including Brazil (as noted above) and Mexico. Our companies report that import documentation that is non-compliant for

minor technical reasons – such as typos or erasures – often results in seizures and stiff penalties. Further, documentation rules are constantly changing and are not promulgated in a transparent manner, making compliance very difficult. In addition, excessive documentation procedures are making it difficult for companies to transfer funds out of these countries to pay vendors.

Finally, we remain concerned that many countries continue to impose sudden tariff increases on imports of U.S.-made and U.S.-branded apparel. Last year, for example, South Africa literally doubled the duties on all imports of apparel literally overnight Even if such increases represent a return to bound rates, we believe the Administration should strongly protest such measures since they are often implemented, as in the case of South Africa, with little warning or justification.

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

Please accept my best regards,

Stephen Lamar
Executive Vice President