american apparel & footwear association

we wear® global markets

October 28, 2015

Edward Gresser
Acting Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

RE: Request for Public Comments to Compile the National Trade Estimate Report on Foreign Trade Barriers. Docket Number: USTR 2015-0014

Dear Mr. Chairman:

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting the following comments to the Office of the United States Trade Representative (USTR) in response to the request for public comments to compile the 2015 National Trade Estimate (NTE) Report on Foreign Trade Barriers.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, our membership includes 340 companies, drawn from throughout the supply chain. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its four million U.S. workers, and its contribution of more than $360 billion in annual U.S. retail sales.

Eliminating trade barriers, both at home and abroad, is vital for the well-being of our industry. Approximately 98 percent of all the clothes and shoes purchased in the United States are imported. Approximately 95 percent of consumers who buy clothes and shoes live outside our borders. Our products, and the inputs we use to make them, must cross borders. Any barrier — whether it comes in the form of border measures, such as tariffs or quotas, or market restrictions, such as standards or local requirements — results in higher costs, lost sales, burdensome delays, and lost jobs.

Ensuring predictable, fair, and transparent enforcement of trade laws is equally important. All too often, trade barriers manifest through the alleged application of unfair trade laws. Likewise, inadequate foreign

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enforcement of intellectual property rights (IPR) harms our members. AAFA submits separate comments to USTR every year on rogue websites and other IPR issues as part of the Special 301 Report.

We welcome efforts of your office, in coordination with those of other agencies, to eradicate such trade barriers. In the attachment, we have presented our views on several particularly troublesome practices. In addition, we offer the following comments.

U.S.-Branded Products

Today, our members service many markets from a variety of different production locations around the world. While we still export from the United States, the vast majority of exports of U.S.-branded product is made in countries other than the United States. The power of global supply chains means that many U.S. apparel and footwear jobs depend on the ability of these foreign-made, U.S.-branded products to penetrate foreign markets. It is our hope that your efforts to knock down trade barriers will encompass these U.S.-branded products, which support so many U.S. apparel and footwear jobs.

Japan

By the same token, our U.S.-made exports face costly barriers in many markets. One such barrier, which has been listed in every edition of the NTE report since the 1980's, is a tariff rate quota imposed by the Japanese government on leather footwear. That quota has stymied the development of Japan as a market for U.S. footwear exports. We understand this longtime trade barrier was resolved favorably in the Trans-Pacific Partnership (TPP), and look forward to reading details on this important development.

Lack of Regulatory Harmonization

We remain very concerned about the incongruent chemical management, product safety, and labeling requirements that continue to proliferate regarding apparel, footwear, textiles, and travel goods worldwide. In today's global supply chain, goods are often manufactured in bulk for a variety of markets all over the world. Each market having its own specific requirements make it very difficult to deliver products efficiently and adds unnecessary delays and costs on manufacturers that eventually trickle down to the consumer level. We urge USTR to work with other nations and governments toward an alignment on standards compliance in chemical management, product safety, labeling, and other similar regulatory areas. The Trans-Atlantic Trade and Investment Partnership (T-TIP) provides an excellent opportunity to unite the two largest markets in a common set of regulatory standards.

Trade Facilitation Agreement

Finally, we urge you to remain persistent in promoting the Trade Facilitation Agreement (TFA), which will eliminate many hidden barriers by ensuring expedited treatment for the movement of goods and greater cooperation between customs officials. Several of the barriers identified in the attachment could be resolved through timely entry into force of the TFA. By mid-October 2015, roughly 50 countries had ratified this important agreement. Our hope is that we can quickly reach the threshold of 108 countries for entry into force, and that more countries will join beyond that. We would support inclusion of language in the NTE acknowledging those countries that have ratified the TFA as well as naming those that have not. Lack of TFA ratification is a trade barrier.

As is often the case, we expect to receive on-going information from members on barriers affecting their exports in key markets around the world. As we develop that information, we will continue to provide that to USTR and other appropriate agencies for action.

AAFA will continue to work on overcoming barriers to trade and promoting the growth of American companies. I look forward to continued collaboration with the U.S. government and specifically the office of the U.S. Trade Representative, and your leadership on these shared goals.

Thank you for your time and consideration in this matter. Please feel free to contact me at 703-797-9041 or slamar@wewear.org if you have any questions or would like additional information.

Sincerely,

Stephen Lamar
Executive Vice President

Attachment

Attachment

Argentina

Argentina remains one of the worst offenders in terms of implementing protectionist trade barriers. We welcomed the recent WTO ruling[1] against Argentina's import restrictions, which brought an end to the use of non-automatic import licenses, and applaud the U.S. Government's efforts in bringing about this outcome. However, our members have seen little overall improvement in Argentina. The country's trade policies, ranging from import quotas to slow the processing of imports, not only make the Argentine market nearly impossible for importers to penetrate, but harm those who are manufacturing within Argentina as well.

Most of Argentina's restrictions stem from an overly burdensome and out-of-date "import-balancing" policy in Argentina, which requires companies to export the same dollar amount as they import. The intent behind this policy is to encourage manufacturing within Argentina. Some AAFA member companies have succumbed to the policy and begun manufacturing in Argentina, increasing their production costs and supply chain complexity. Ironically, however, many are unable to sustain production in the country because the policy also prevents them from being able to import the raw materials and machinery they need in order to manufacture their products.

Duties on apparel and footwear imported into Argentina must be paid on reference prices rather than actual prices; only specific ports of entry can be used for specific types of goods; and, requirements are routinely changed without prior warning or written notice. Companies that complain directly to the Government of Argentina often face retaliation through tougher restrictions or tighter enforcement.

Brazil

Similar to Argentina, we have seen little improvement in Brazil's trade policies over the past few years. Brazil's restrictions are most detrimental on imports of footwear. Brazil's use of anti-dumping duties of USD$13.85 per pair remains in effect for virtually all Brazilian imports of Chinese footwear. Much of this footwear is U.S.-branded footwear supporting thousands of U.S. jobs.

Brazil also employs a non-automatic import licensing (NAIL) scheme. Licensing generally must be obtained prior to shipment of goods overseas. In order to meet this timeframe, the order and shipment must be finalized, the shipping document produced, then the import license obtained. According to AAFA members, the application process takes

[1] World Trade Organization, Dispute Settlement: Dispute DS444, Argentina – Measures Affecting the Importation of Goods: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds444_e.htm.

approximately 20 days. The import license is only valid for 60 days, roughly equal to the transit time from most factories in Asia. Therefore, there is always a risk that the license might expire before the shipment can reach their destination and, if that happens, the entire application process has to be restarted. As with similar requirements in other countries, manufacturers incur a heavy financial burden and delays due to this process.

Brazil also requires Certificates of Origin for non-MERCOSUR footwear imports and requires footwear imports to be imported directly from the footwear's country of origin, even if the footwear has the correct Certificate of Origin.

Canada

The U.S. has a very good trade relationship with Canada, and AAFA members have generally benefited from transparent regulations and experiences with our neighboring country. However, several nuisance regulations and practices stand out as barriers that must be addressed.

A long-standing irritant is the Upholstered and Stuffed Articles regulations imposed by three Canadian provinces (Quebec, Ontario, Manitoba). These regulations, which have become a *de facto* national standard, require the registration of factories and the payment of annual fees to one or more provincial agencies. Because the terms "padding" and "stuffing" are loosely defined, the applicability of these regulations to specific products is arbitrary and punitive. Our members are continually frustrated in efforts to clarify whether these regulations apply to their products. Moreover, imported products (from the United States or any other country) are discriminated against because Canadian manufacturers have the ability to register their products in a single province while imported products must be registered in all three separate jurisdictions (and pay three registration fees). We urge the U.S. government to pursue resolution of this critical issue aggressively and put other countries on notice that regulations in the name of "public safety" must be transparent, non-discriminatory, and scientifically-based.

Our members have also raised a number of concerns over practices engaged in by the Canada Border Services Agency (CBSA) – the Canadian customs authority. Members have reported an increase in burdensome audits and inspections. Of particular note are tariff classification audits resulting in contentious revenue neutral reclassifications which impose an obligation, under threat of penalty, for the importer to self-correct previous importations prior to appeal. Members have also reported a lack of guidance and consistency in tariff classification rulings and other regulatory issues, and the lack of access to knowledgeable CBSA staff when seeking clarification on points of law or policy. Finally, members have also raised concerns about the CBSA’s resistance to certain favorable Canadian International Trade Tribunal rulings respecting downward transfer price adjustments and revenue neutral retroactive North American Free Trade Agreement (NAFTA) claims.

China

Many of the challenges we see in China relate directly to the lack of information, transparency, and consistency in rule-making. Regulations within China are often controlled by state agencies and differ by province leading to inconsistent treatment and enforcement across jurisdictions. Transparency in all transactions and across multiple agencies is limited, and thus a barrier to trade. There is often little or no opportunity to comment on proposed regulations and the time between developing a regulation and implementation is usually miniscule.

For example, when it comes to standards, China’s General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), is in charge of not only import/export commodity inspection, certification, testing, and standardization, but law enforcement as well; this creates an entity that can easily and quickly change its standards and policies without needing to provide enough time or information to allow companies to comply. Furthermore, AQSIQ often imposes differing regulations at the province level, providing no consistency. Issues related to this lack of transparency can cause shipments to be delayed by up to four weeks in some cases for inspection.

Unofficial reference price lists have been used by the Chinese customs agency. Further, import tariffs tend to differ depending on the port of entry and importing agents involved. In addition, the actual tariffs are often negotiated with local customs agents. Our members have also noted that China has a pattern of enforcing various compliance regulations on imports more strenuously than on domestically-made goods, even though all goods sold within China are subject to the same regulations.

Colombia

Colombia initiated an anti-dumping investigation against Chinese footwear, with Mexico as a comparison country, in June 2015. Many U.S. brands will be adversely by this action.

Colombia is also working on new legislation (Bill 148/2015) on product safety. Early drafts would establish an extremely low 50 parts per million (ppm) lead content restriction for products intended for use by children. The bill also refers to lead "prohibitions," with no reference to specific limits, for sweeping categories of children-related products including, *inter alia*, toys, clothing, and furniture. Such requirements impose testing costs and create burdens, primarily because lack of proper definitions or limits reflecting risk or science based principles create considerable confusion.

Ecuador

Ecuador continues to impose draconian restrictions on U.S. apparel and footwear imports. Ecuador imposes a "mixed" *ad valorem* and specific duty on all imports of footwear. The rate is 10 percent + USD $6 per pair duty on the fair on board (FOB) value of imported footwear. For footwear, Ecuador claims the new "mixed" duty meets their 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, USD $30 per pair. For apparel, Ecuador has established a minimum pricing scheme that is equally as onerous.

We are also concerned with burdensome labeling requirements imposed on imports to Ecuador. Ecuadorian law (INEN 013) requires U.S. footwear companies to make a special label on every pair of shoes shipped to Ecuador. All labels have to have identical information in Spanish such as size, upper, sole, lining, and footbed. Although some of these requirements may be mitigated by using internationally accepted pictograms, required information still includes the importer's name, address, and RUC # (Ecuadorian tax ID number). This means U.S. footwear companies need to make special production runs for Ecuadorian shipments (because labels are done and applied to the upper during an early part of the footwear assembly) or have to attach on finished product, which also requires a lot of additional labor opening up boxes and repacking. Similar concerns manifest themselves with respect to apparel. Compounding the problem, such shipments need to be inspected before they leave the country. Among other things, this often requires companies to ship product to a third country – solely for the purpose of inspection – before onward export to Ecuador.

India

India employs extensive documentation requirements, which frequently cause delays at ports and extra costs for importers. Textile and apparel imports into India require a certificate from the Textile Committee of India. This certificate can only be is obtained through a lengthy and expensive process that often involves extensive sampling and testing for each style and fabric.

Indonesia

Indonesia applies a non-automatic import licensing non-automatic import license (NAIL) system on textiles, apparel, and footwear. The NAIL system costs importers both time and money to comply. Further, the Ministry of Trade issued Decree 27 on May 1, 2012 that limits the importation of finished goods. This decree limits importers who hold a

General Importer Status to importing goods within only one category of the Indonesian Goods Classification System (i.e., can import only textiles and textile products, or only footwear and footwear products, but cannot import textiles and footwear). Most AAFA member companies, and most apparel and footwear companies in general, sell a combination of product categories. This decree seriously limits their ability to do business within Indonesia.

Furthermore, in 2009, Indonesia's Ministry of Trade issued new regulations requiring all labeling on apparel, footwear, and travel goods to be in Bahasa Indonesian. While many countries have certain language requirements for labels, Indonesia has gone a step farther and requires the name and address of the manufacturer to be in Bahasa Indonesian as well, a challenge that is often hard to meet and significantly reduces the manufacturer's ability to produce a product for the global marketplace. Finally, Indonesia is beginning to limit the ports through which certain products may enter the country.

Israel

The requirement for a hard copy Certificate of Origin at the time of entry for imports into Israel under the U.S./Israel FTA remains a barrier. Even worse, the Israel Tax Authority has put in place unreasonable requirements for the certificate. The U.S.-Israel FTA Certificate of Origin must be original, on green guilloche paper, and signed and/or certified. This requirement should be renegotiated to bring it in line with more recent FTAs which require only an electronic version of a certificate or no certificate at all.

Mexico

Mexico continues to implement trade barriers, border measures, and other restrictive policies. For example, in the past few years, Mexico has:

- Suspended previously scheduled duty rate reductions;
- Initiated new importer registration requirements;
- Established reference and minimum pricing schemes (in apparent violation of Article Seven of the World Trade Organization (WTO) Customs Valuation Agreement);
- Imposed new and confusing labeling requirements, without proper and timely notices[2];
- Reduced ports of entry;
- Commenced intrusive customs investigations into imports by U.S. textile, apparel, and footwear companies;

[2] A modification to NOM-004-SCFI-2006 was notified on 09/09/15. That notification covered revisions to NMX-A-099-INNTEX-2007 (Fiber content/identity labeling), which was replaced by two separate standards on the labeling of natural fibers (NMX-A-6938-INNTEX-2013) and manmade fibers (NMX-A-2076-INNTEX-2013). The Diario Oficial notice making the NMX changes effective was published on 09/03/15.

- Denied entries of goods that qualify under FTAs with Central American countries;
- Enforced antiquated domicile requirements;
- Imposed new burdensome permitting and paperwork requirements for both imports and exports; and
- Imposed burdensome requirements for plant certifications leading to unacceptable shipment delays.

Not only do these activities create uncertainty and impose costs on our members, they also do not reflect the kind of behavior we would expect from countries with whom we have negotiated multiple free trade agreements. We strongly encourage the Administration to use every tool at its disposal, including dispute settlement, to attack these practices.

Turkey

In August 2014, without any prior notification, Turkey issued new import regulations resulting in burdensome paperwork, extremely high duty rates, and lengthy processing times. Turkey applied additional footwear duties of 30 - 50 percent, with minimum charges of USD$3.00 - $5.00, on top of normal duty rates of 7 - 16.9 percent. These additional duties, which are not anti-dumping rates, have no expiration or predictable review timeline. Furthermore, the application of the rates appears arbitrary. The additional rates apply to imports from Most Favored Nation (MFN) status countries and to some preference programs (such as with developing countries Indonesia, Vietnam, and Bangladesh), but not to other preference programs (such as with the European Union). The financial impact of these additional duties is enormous.

The footwear measures are in addition to safeguard duties imposed by Turkey on apparel and textile imports in 2011. The measures levies safeguard duties of 30 percent on all imports of apparel and 20 percent on all imports of woven fabrics, including on Turkish imports of U.S.-made fabrics and apparel. Countries with which Turkey has FTAs or least-developed countries (LDCs) face somewhat lower safeguard duties. These safeguard duties are imposed on top of Turkey’s normal duties of 12 percent for apparel and 8 percent for fabrics. The Turkish government has repeatedly failed to demonstrate the need for these safeguard measures and the measures, on their face, violate World Trade Organization (WTO) rules.

Among Turkey’s non-tariff barriers as well is a particularly onerous import registry requirement, a task that is both redundant and inefficient. A special import registry form requires companies to spend extra time supplying basic company information that is already easily available elsewhere and must be submitted annually from all factories in all countries that export to Turkey. The form submitted must be an original hardcopy and certified by both the local Chamber of Commerce and the nearest Turkish Consulate.

A Turkish distributor for an AAFA member notes that these new regulations also coincide with a customs clearance process in Turkey that now takes up to 30 days.