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October 29, 2014

The Honorable Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

RE: Request for Public Comments to Compile the National Trade Estimate Report on Foreign Trade Barriers. Docket Number: USTR-2014-0014. Federal Register Vol. 79, No. 158 (pg. 48292-48294) August 15, 2014.

Dear Ambassador Froman:

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 as posted in the Federal Register August 15, 2014.

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 $361 billion in annual U.S. retail sales.

Thank you for this opportunity to submit comments. We continue to be concerned about the increasingly aggressive use of trade remedy laws, safeguard measures, and other restrictions against imports of apparel, footwear, textiles, and travel goods by a fast-growing number of countries. As we use this opportunity to highlight many of these burdensome measures, it is important to note that AAFA members produce, market, and sell apparel and footwear all over the world.

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Therefore, we urge the U.S. government to address these issues on behalf of both restrictions not only against U.S.-made products, but also against U.S.-branded products.

Please find below a sampling of some of the most egregious and arbitrary restrictions faced by U.S.-branded and U.S.-made apparel, footwear, textiles, and travel goods around the world today.

Mexico

For the past several years, we have urged USTR to address Mexico's arbitrary use of trade remedy laws to close its market to imported footwear and apparel. Rather than repeat ourselves (please see past AAFA submissions), we will focus on the most pressing issue at hand: the August 29, 2014 Decree giving permission to the Mexican Secretaries of Finance and Economy to implement regulatory measures and non-tariff restrictions on footwear imports. This Decree includes many provisions that will negatively impact U.S. companies. We are already starting to hear that the numerous burdensome provisions in this Decree have essentially prevented some companies from importing into Mexico altogether.

First, the Decree suspends the previously announced duty-rate reductions for footwear imports. While companies are certainly used to paying very high duty rates on footwear imported into Mexico, many had already factored the reduced rates into their supply chain strategies for the coming years and will now have to re-absorb the cost of the higher rates.

Second, the Decree creates a sectorial census of footwear importers. No importer may introduce footwear to Mexico if it is not enrolled in the sectorial census. The Mexican tax authorities have the authority to maintain specific requirements for enrollment. There is a fear among many in the footwear industry that this census is simply a tool to stop importing all together. If the Government decides a company does not meet the requirements to enroll in the census, they will not be allowed to import any products.

Third, the Decree also introduces several logistical barriers to importing footwear into Mexico. As of October 1, 2014 the number of ports of entry by which footwear can enter the country has been reduced from 33 to only 9. Modifying the supply chain to accommodate this restriction will increase costs and delays for AAFA members.

Finally, and most troublesome, the Decree establishes a list of reference prices or, as described in the Decree, "estimated prices" by which duty rates will be established. Rather than paying duties on the actual declared value of a product at the time of importation, importers are now required to make an advanced guaranteed deposit of import duties based on the government-estimated prices. Not only are these prices extremely high, the Government of Mexico has not disclosed the methodology by which

they were established. The requirement for the use of estimated prices went into effect October 1, 2014 without allowing companies enough time to plan for the drastically increased duties. By implementing the use of estimated prices, Mexico is violating Article seven of the World Trade Organization (WTO) Customs Valuation Agreement.

Additionally, the Mexican government is reportedly discussing instigating an anti-dumping investigation into footwear imports from China and Vietnam. Any anti-dumping investigation should be stopped or thrown out if it is premised in any way on the collection of trade data through these illegal valuation databases and reference prices.

While the provisions listed above are certainly enough to cause alarm, there may in fact be even more restrictions still ahead. The Mexican Government has stated there will be an increase in inspections and audits and additional import requirements. AAFA member companies have already been negatively impacted by additional inspections and requirements by Mexico's Tax administration, *Servicio de Administración Tributaria* (SAT), in the past few years in the apparel and textile sectors. We fear the nightmare being experienced by many in the U.S. apparel and textile industry will soon impact the U.S. footwear sector as well.

Argentina

Argentina remains one of the worst offenders in terms of implementing protectionist trade barriers. We welcomed the recent WTO ruling against Argentina's import restrictions. However, as of today, our members have seen little 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.

The main focus of the WTO dispute is the requirement that all imported shipments must be accompanied by a *Declaración Jurada Anticipada de Importación* (DJAI) – advance customs and excise statement – proving they paid the right amount of taxes. While this may not seem too unreasonable, the problems arise in that the declaration must be approved by two different Argentine agencies prior to entry. This requirement imposes additional delays as these agencies often do not communicate. Further, the agencies give conflicting answers as to what is required of importers. AAFA has received estimates that, on average, it takes 110 days to obtain approval for the DJAI. Not only is this timeframe extremely long, it is variable and unpredictable. Additionally, once the DJAI is issued, it is valid for only 180 days. Any delays that exhaust that timeline or any changes to the information supplied in the application require starting the process all over again.

In addition to the DJAI, a Certificate of Origin is required for all products imported into Argentina. The Certificate must be authenticated (certified) by both the local Chamber of Commerce and the local Argentine Consulate. The fee for the Certificate is USD$60.00

per document, payable by money order only. This requirement places additional financial burden on manufacturers who must produce their goods in advance to ensure the documentation is accurate. Yet, payment from the customer and shipment is delayed until all the proper authorizations are obtained.

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 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 to manufacture the product.

The issues do not end there. 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 routinely change without prior warning or written notice. It is also important to note that the political and economic environment in Argentina today is almost as worrisome as the policies themselves. In many cases, when U.S. companies have approached the Government of Argentina to express concerns, they face even tougher restrictions on their business in the country. Those smaller companies which cannot afford the risk are forced to swallow unfair practices in fear of even rougher retaliatory actions.

AAFA applauds the United States for taking steps to resolve these issues through the WTO dispute settlement process[1]. This action was fundamental in encouraging Argentina to remove yet another barrier to trade – the use of non-automatic import licenses. Of course, as you can see from the paragraphs above, many problems still remain. From our perspective, Argentina's current policies seem to violate the regulations set out by not only the WTO, but also by the U.S. – Argentina Bilateral Investment Treaty by preventing U.S. companies to invest in Argentina. Furthermore, Argentina's actions set a dangerous precedent for other countries in the region and around the world.

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[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.

Brazil

Similarly 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 for footwear. 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 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. Many of these egregious and arbitrary restrictions, including the use of NAILs, have now been expanded to Brazilian imports of apparel and textiles as well. The only intention of these schemes seems to be to make it next to impossible to sell U.S.-made and U.S.-branded apparel, footwear, and textiles into the Brazilian market, the largest market in Latin America.

What is most worrisome in Brazil is the tendency of its government to change import procedures frequently and increase tariffs without prior notice or explanation. For example, in September of 2012, without any prior notice, Brazil increased import duties on 100 HTS lines, including footwear parts, imported from anywhere in the world. Just as suddenly, in September of 2013, it was announced the increased duty rates would expire. While we are certainly pleased these particular duty rates have been lowered, the whiplash that comes with it doesn't make it easy to plan product shipments.

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%, with minimum charges of USD$3.00 - $5.00, on top of normal duty rates of 7% - 16.9%. 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. One AAFA member company estimates that footwear with an FOB price of USD$10.00, which previously had a landed costs of USD$15.00, will now have a landed cost of USD$20.00.

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% on all imports of apparel and 20% on all imports of woven fabrics, including on Turkish imports of U.S.-made fabrics and apparel. Countries with which Turkey has free trade agreements or least-developed countries (LDCs) face somewhat lower safeguard duties. These safeguard duties are imposed on top of Turkey's normal duties of 12% for apparel and 8% 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.

Turkey implements non-tariff barriers as well. The country's unique Exporter Registry Form requirement has now been expanded to footwear in addition to textiles and apparel. In order to import into Turkey, companies are required to fill out registry form, a task that is both redundant and inefficient. The 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 which 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. The Consulate charges USD$20.00, cash or money order only, to process the form and AAFA members estimate the process can take several hours to obtain the form in person of 2-3 days to process by mail.

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.

Indonesia

Following what we fear to be a growing trend, Indonesia also applies a Non-automatic import licensing (NAIL) (non-automatic import license) system on an ever-expanding list of products which includes textiles, apparel, and footwear. The NAIL system costs importers both time and money to comply. Our main concern with Indonesia arrived in the form of a Ministry of Trade decree issued May 1, 2012, which limits the importation of finished goods. Decree 27 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 and 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 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 has begun to limit the ports through which certain products may enter the country. Although this limit has not yet been imposed on the major products of our industry, without interference it is likely to occur very soon.

Ecuador

I urge you to work to ensure Ecuador eliminates its continued 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% + US $6 per pair duty on the 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, US $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.

Japan

In regards to what may be the longest ongoing issue for our industry, we urge USTR 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, we 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 to address this issue over the last few years, Japan still maintains an extremely restrictive TRQ on imports of leather footwear. This TRQ hurts Japanese consumers, U.S. footwear manufacturers, and U.S. footwear brands alike and is a clear and longstanding violation of WTO rules and norms.

China

We have learned from our members (because receiving information from the Chinese Government directly is very rare) that China has implemented a requirement that import shipments now be accompanied by a form called a Sales Contract. The form calls for data elements that are easily available on the Commercial Invoice and other documents, yet is formatted with restrictive legal language and the need for a signature. AAFA members are attempting to work with their Chinese subsidiaries to find a way to implement this form. However, public information about the requirement is difficult to obtain.

Many of the challenges we see in China relate directly to this 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, creating 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 with a much heavier hand than it uses with domestic made goods, although all goods sold within China are subject to the same regulations.

Apparel and footwear companies still face serious challenges in China, especially with the rapid growth of "rogue" Web sites. These sites tend to be based in China and have been successful in eluding U.S. Customs inspections due to their ability to ship illicit product direct to the consumer. AAFA submits separate comments to USTR every year on rogue websites and other intellectual property rights (IPR) issues as part of the Special 301 Report.

Republic of Korea (South Korea)

Similarly to China, South Korea has requested a Sales Contract electronic form as well. Unfortunately, we have been unable to obtain much information on this requirements or how companies can comply.

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. AAFA members have been instructed by the U.S. Commercial Service that the main objective of the Textile Committee is to ensure the quality of textiles for internal consumption and, thus, obtaining the certificate becomes a complicated process. Customs officials take a sample of each color and fabric and send it to the Textile Committee for testing. In the majority of cases, 25% or a minimum of 5 pieces of each color and fabric is sampled from each shipment. Such sampling is extremely broad. Testing the goods prior to exporting to India is not an option as Indian Customs will still request samples for testing. The exporter can send a small sample shipment prior to the primary shipment to avoid the demurrage charges and clearance delays; however, such shipping would be prohibitively expensive. The importer is charged USD$59.00 plus service tax for each sampling.

The processing time to obtain the certificate, which is required for customs clearance, is a week. It is valid for up to six months, but only for the same item in the same color and fabric. The entire process is an administrative disaster.

Israel

Many AAFA companies import products into Israel under the U.S.-Israel Free Trade Agreement (FTA). However, the companies often feel the agreement is outdated in that it requires a hard copy Certificate of Origin at the time of entry. In addition, 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.

According to one AAFA member, the Israel Tax Authority has implemented unreasonable requirements for the creation of the certificate, going so far as to deny duty-free entry of clearly qualified footwear simply due to the lack of formal written authorization to the signing party, the freight forwarder. Such a requirement has not been publicized and does not follow common business practices. Nevertheless, even if it is a valid requirement, it certainly does not warrant complete denial of a claim and a penalty assessed to the distributor. With no simple recourse to protest this negative ruling of the Israel Tax Authority, the AAFA member in question has had to pursue a lengthy campaign to make its case in partnership with the U.S. Commercial Service, its distributor, and the distributor's customs broker. The company is still awaiting a final ruling.

Canada

Finally, 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 our neighbors up North – 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, since 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 in 2011, 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. To put it simply, our members' companies are continually frustrated in efforts to clarify whether these regulations apply to our products.

The U.S. has a very good trade relationship with Canada, and AAFA specifically has benefited from generally transparent regulations and experiences with our neighboring country. Almost for this reason, nuisance regulations which serve no greater purpose stand out as barriers to what, otherwise, is a great trade opportunity for U.S. companies.

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 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.

Global Labeling Practices

Beyond any specific countries, we remain very concerned about the incongruent labeling rules which continue to proliferate regarding apparel, footwear, textiles, and travel goods. We urge USTR to work with other nations and governments toward an alignment on standards compliance including chemical management, product safety, and labeling requirements. In today's global supply chain, goods are often manufactured in bulk for a variety of markets all over the world. When every market has their own specific requirements, it makes it very difficult to deliver products efficiently and adds unnecessary delays and costs on manufacturers which eventually trickle down to the consumer level.

Specifically related to product labeling, AAFA member companies incur delays and costs with meeting unique and often unclear labeling requirements for several countries including Indonesia, Peru, Chile, Israel, China, Korea, and Australia. Some of the creative solutions for these requirements include companies purchasing special software, manual processing of labels, and shipping pre-printed label stock from the importing country to facilities in the United States and to foreign factories for attachment prior to export. All of these add unnecessary time and cost to production.

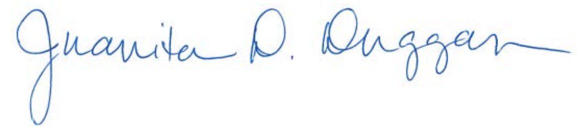
Conclusion

In closing, I urge you to work closely with the U.S. Department of Commerce's Office of Textiles & Apparel (OTEXA) in identifying and combating foreign trade barriers. OTEXA has a strong track record of identifying new foreign labeling requirements, safeguard measures, and other restrictions that could affect the U.S. apparel, footwear, and textile industry. OTEXA also partners with our industry to combat and prevent these protectionist measures around the world.

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 Mr. Ambassador, on these shared goals.

Thank you for your time and consideration in this matter. Please feel free to contact Marie D'Avignon at 703-797-9038 or mdavignon@wewear.org if you have any questions or would like additional information.

Sincerely,



Juanita D. Duggan
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