May 27, 2009

Barbara E. Tillman
Director, AD/CVD Operations
Office 6; Room 1870,
U.S. Department of Commerce
14th Street and Constitution Avenue, NW,
Washington DC.20230

Subject: Application of the Countervailing Duty Law to Imports from the Socialist Republic of Vietnam: Request for Comment; FR Notice Volume 74, Number 79, April 27, 2009

Ms. Tillman:

Thank you for providing the American Apparel & Footwear Association (AAFA) – the national association of the apparel and footwear industries and their suppliers – this opportunity to submit comments in response to the U.S. Department of Commerce's ("the Department") April 27, 2009 request for comments regarding the efficacy of applying Countervailing Duty Law (CVD) to U.S. imports from Vietnam.

AAFA members make, market and sell apparel and footwear in the United States and throughout the world, including Vietnam. Therefore, we feel we are in a unique position to comment on the Department's request.

AAFA members understand the need for strong U.S. trade remedy laws to combat unfair trade practices. However, in representing companies that both source from and sell into a variety of countries around the world, including Vietnam, we have a strong interest in ensuring that U.S. trade remedy laws are administered in a rational, fair and balanced manner. We, therefore, welcome the opportunity to provide these comments for the Department's consideration.

Based on our industry's experience in Vietnam, we strongly believe that Vietnam is a so-called "market economy". As such, it should be treated as a market economy for BOTH the purposes of anti-dumping and CVD law.

Vietnam is now the second largest supplier of apparel and footwear to the U.S. market. In fact, after petroleum, apparel and footwear represent the second and third largest export sectors in Vietnam. The overwhelming majority of the factories in the Vietnam apparel and footwear industry are privately-owned, with over half being foreign held. Further, most of the raw materials and other inputs that go into apparel and shoes manufactured in Vietnam are

1601 North Kent Street, Suite 1200, Arlington, VA 22209 www.apparelandfootwear.org p (703) 524-1864 (800) 520-2262 f (703) 522-6741

imported from the United States (cotton), China, Korea, India, Taiwan and elsewhere. The prices for these inputs are established by the market. Finally, the transactions between our member companies and factories located in Vietnam are strictly market-based transactions.

As you know, the purpose of CVD law is to protect domestic manufacturers of a like or directly competitive product from U.S. imports of that product from a country that somehow subsidizes the manufacture of that product so that it can be sold at less than fair value in the United States.

The underlying assumption of CVD law, and the precedent that existed for decades in practice, is that the country that those U.S. imports are coming from must be a "market economy," where market-based prices exist for all of the inputs that go into that product. Otherwise, how can the U.S. Department of Commerce accurately capture the effect of the alleged subsidies on the value of those U.S. imports?

Regrettably, in this case, the U.S. Department of Commerce has chosen to simultaneously pursue both an anti-dumping AND a CVD case against U.S. imports of Polyethylene Retail Carrier Bags from Vietnam. More importantly, the U.S. Department has chosen to treat Vietnam as a "non-market economy" for the purposes of the anti-dumping case.

Such an approach results in de facto "double jeopardy" for Vietnam. The purpose of treating Vietnam as a "non-market economy" in the anti-dumping case is the base assumption made by the U.S. Department of Commerce that prices in Vietnam are not set by the market. Under this assumption, everything from utility rates, to raw materials prices to the availability of and interest rates on bank loans are not set by the market, but are somehow influenced and/or directed by the "State." In essence, the assumption is that the entire market is "subsidized."

As a result, the U.S. Department of Commerce must select so-called "surrogate" countries with similar levels of economic development and other similar macroeconomic factors to estimate real prices in the Vietnamese market. This purpose of this process is to eliminate the "subsidies" that exist in a non-market economy and allows the Department to determine whether U.S. imports of Polyethylene Retail Carrier Bags from Vietnam were dumped on the U.S. market at less than fair value.

At the same time, however, the Department is pursuing a CVD case against U.S. imports of Polyethylene Retail Carrier Bags from Vietnam. Yet, in order to determine whether a product is subsidized, the Department must assume that all prices in Vietnam are actually market-based and that, in reality, Vietnam is actually a market economy.

Hence, the simultaneous pursuit of these two cases, one of which is based on the assumption that Vietnam is a market economy and the other which is based on the assumption that it is not, is fundamentally flawed and unfairly subjects U.S. imports from Vietnam to punitive retaliatory duties twice for the same alleged transgression.

In conclusion, we believe that Vietnam should be treated as a market economy in ALL cases. However, no CVD cases against U.S. imports from Vietnam should be allowed to be initiated

until such time as Vietnam is treated as a market economy for the purposes of anti-dumping investigations.

Thank you for your time and consideration in this matter. Please contact Nate Herman (at nherman@apparelandfootwear.org or at 703-797-9062) with our staff if you have further questions.

Sincerely,

Kevin M. Burke
President and CEO