

# Jones Apparel Group, Inc

250 Rittenhouse Circle  
Bristol, Pa. 19007

December 27, 2006

David M. Spooner  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
14<sup>th</sup> St. and Constitution Ave., N.W., Room 1870  
Washington, D.C. 20230

Public Comments  
Total Pages: 11

**PUBLIC DOCUMENT**

**RE: Department Request for Comments- Monitoring of Textile and Apparel Products from Vietnam**

Dear Assistant Secretary Spooner:

These comments are being filed, with respect to the above-referenced matter, on behalf of Jones Apparel Group, Inc. ("JAG").

## **I.**

### **JONES APPAREL GROUP INC.**

JAG is an American company publicly traded on the New York Stock Exchange. In 2005, JAG revenues were in excess of five billion dollars.

JAG is a leading designer, marketer and wholesaler of branded apparel, footwear and accessories. JAG markets directly to consumers through its chain of specialty retail and value-based stores, and operates the Barneys New York chain of luxury stores. Our nationally recognized brands include Jones New York, Evan-Picone, Norton McNaughton,

Gloria Vanderbilt, Erika, I.e.i., Energie, Nine West, Easy Spirit, Enzo Angiolini, Bandolino, Joan & David, Mootsies Tootsies, Sam & Libby, Napier, Judith Jack, Kasper, Anne Klein, Albert Nipon, Le Suit and Barneys New York.

Each brand is differentiated by its own distinctive styling, pricing strategy, distribution channel and target consumer. JAG primarily contracts for the manufacture of its products through a worldwide network of quality manufacturers, including manufacturers located in Vietnam. For more than 30 years, JAG has built a reputation for excellence in product quality and value with respect to, among other things, textiles and apparel.

As a Fortune 500 retailer of textile and apparel and an importer of certain textile and apparel products from Vietnam, JAG is an interested party in this proceeding. The lead JAG executive for purposes of liaison with the Department on the Vietnam monitoring program is Jodie Mendoza, Senior Vice President, Logistics, Customs & Vendor Compliance, 250 Rittenhouse Circle, Bristol, PA, 19007, Phone: 215-781-5432, E-mail: jlm@jny.com.

## **II.**

### **OVERVIEW**

As demonstrated in Part I, above, JAG is a very significant member of the U.S. textile and apparel industry, with a strong interest in ensuring that the country of Vietnam remains, well into the foreseeable future, an open and competitive source of fairly traded textile and apparel products. If American companies such as JAG are to be able to remain competitive in a global textile and apparel market, it is essential that we be able to obtain product from a wide variety of competitive global sources.

JAG does not agree that there is a need for a program to monitor textile and apparel imports from Vietnam. Nor does JAG agree that there is a need for the Department to self-initiate dumping investigations of textile and apparel imports from Vietnam.<sup>1</sup> These facts notwithstanding, JAG intends to cooperate fully with the Department in this endeavor in order to ensure that the Department establishes an efficient monitoring program that will cause the least amount of disruption possible in American textile and apparel markets.

Based on JAG's detailed knowledge of the textile and apparel industry, and our understanding of the Department's intent in establishing a monitoring program, we are concerned that the Department may be on the verge of launching a monitoring program of such scope as to be very disruptive and unmanageable. In addition, we are concerned with the fact that the Department's request for comments provides absolutely no insight into how the monitoring program will provide guidance to exporters and importers seeking to avoid dumping liability potentially arising from the program. These concerns need to be given serious consideration by the Department.

Part III, below, contains JAG's response to questions contained in the Department's request for comments.

### **III.**

#### **JAG COMMENTS ON DEPARTMENT QUESTIONS**

##### **A. Consultative Process with Interested Parties**

- If the proposed monitoring program is to operate effectively, efficiently and fairly, it is essential that the Department establish a transparent consultative process as soon

---

<sup>1</sup> JAG reserves the right to challenge the Vietnam monitoring/self-initiation programs as contrary to law.

as possible. This process should be based upon working committees representing the private sector that will act as liaison between the private sector and the Department's representatives who will actually be constructing and implementing the monitoring program.

One private sector committee should consist of leading U.S. textile and apparel companies, such as JAG, as well as leading trade associations such as the American Apparel & Footwear Association ("AAFA").<sup>2</sup> Membership on the Importers' Committee should be limited to textile and apparel companies that import from Vietnam.

There should also be a private sector working committee consisting of representatives of the domestic industry.<sup>3</sup> Membership on the Domestic Producers' Committee should be limited to U.S. companies that can demonstrate they are, in fact, producers in the United States of textile and apparel products that are identical to or like textile and apparel products imported from Vietnam.

These committees should meet with Department representatives on a weekly basis until the monitoring program is implemented and, at a minimum, a monthly basis, after the monitoring program has been established. Members of the Department's Liaison Committee must, we submit, be authorized to disclose and discuss all details of the program, including details not officially released by high level Department executives.

- JAG fully agrees with the Department's decision to conduct hearings in Washington, D.C. to gather information before the monitoring program is implemented. It is

---

<sup>2</sup> AAFA is located at 1601 North Kent Street, Suite 1200, Arlington, VA 22209. See also, [www.apparelandfootwear.org](http://www.apparelandfootwear.org)

<sup>3</sup> JAG does not concede that there is a domestic industry producing textile and apparel products that compete with imports from Vietnam and reserves the right to challenge the existence and standing of any alleged domestic industry.

also our view that field hearings will be a valuable consultative tool and recommend that the Department consider holding field hearings in New York City, Chicago and Los Angeles, major U.S. apparel centers.

**B. Products**

- The Department has already identified five broad product categories (trousers, shirts, underwear, swimwear and sweaters) as being of “special sensitivity.” These product categories are comprehensive and involve a large number of individual product items within and across all categories.

The challenges posed to the Department for these product categories alone are now, we submit, barely manageable. Given the investment in time and money that the Department will have to make for items included within the five sensitive categories, it is questionable, at best, that expanding monitoring beyond certain items contained in these product groups will enhance the value of the monitoring programs. In fact, based on our experience in the textile and apparel industry we are reasonably confident that expanding the scope of the monitoring program would lead to a totally unmanageable program.

For example, the following identifiable product lines exist within the broader category of “trousers:” knit and woven, men’s/boys/ women’s/girls, blue jeans, dress slacks, ski pants, hiking pants, shorts, bike shorts, performance outerwear pants, insulated pants for hunting, stirrup pants, women’s pajama pants, lounge pants and track suit pants.

The category “shirts,” for example, includes the following product lines: knit and woven, men’s/boys/women’s/girls, T-shirts, sweatshirts, tank tops, dress shirts, halter tops

and tube tops. The same type of breakouts apply to the categories of underwear, sweaters and swimsuits.

The matter is further complicated by the fact that the categories of knit shirts, woven shirts, pants and shorts, underwear, swimwear and sweaters, for example, have close to 800 HTS item numbers. All these facts dictate that the Department narrow, not expand, the scope of the monitoring program.

- There are no bellwether or benchmark products for categories or groups as a whole. In other words, there is no shortcut available whereby the Department could examine only one product line within a broad category and extrapolate dumping findings for product A to products B, C, D, E, etc. in the broader category.

- Other than OTEXA reports, JAG is unaware of any publicly available aggregate information that could be used for the Vietnam monitoring program.

- The Department should limit the scope of the Vietnam monitoring program exclusively to products that specific U.S. domestic producers have identified as products they produce. There can be no justification for monitoring imports of products that are not manufactured in the United States as there would be no “domestic industry” that would be injured and entitled to the protection of an antidumping duty order.

- No particular product line should be monitored unless imports from Vietnam account for at least twenty-five percent of domestic consumption of that product line.

- No individual entry of textiles and apparel should be monitored unless the total value of that entry exceeds a minimum of \$10,000.00.

### **C. Production Templates**

The Department's discussion of production templates is extremely vague and provides no guidance as to what the Department is seriously considering in terms of a methodology for determining whether dumping is likely to exist. This void, in terms of meaningful guidance, must be filled as soon as possible.

**D. Domestic Industry Information**

Before the Department can self-initiate a dumping investigation against Vietnam, the Department must have evidence to support the belief that the domestic industry is suffering material injury or is threatened with material injury by reason of allegedly dumped imports. This is a formidable task.

A reference to the WTO Antidumping Code, and the U.S. dumping statute which tracks the WTO Code reveals an extensive list of factors that must be considered by the Department before self-initiation can occur. These factors include among others, domestic industry sales, market share, pricing, employment, wages, inventory, capacity, capacity utilization, profits, return on investment, price suppression, price depression, and lost sales. A failure by the Department to evaluate these factors as part of a decision-making process for self-initiation would certainly be WTO-illegal and would violate well-established policies and procedures in the relevant U.S. regulations and statutes, causing any such self-initiation to be contrary to the law.

There is only one source for the needed domestic industry information, i.e., the members of the domestic industry themselves. There is only one way that we know of to collect that information, i.e., by sending questionnaires to the members of the domestic industry.

**E. Biannual Evaluation Process**

- The most important information the Department should consider in deciding whether to self-initiate is:

- Evidence to support reason to believe that a particular product is being sold at prices in the United States that are below normal value, with a weighted average dumping margin that is above 2.00%.

- Evidence to support reason to believe a domestic industry is suffering, or is threatened with, material injury

- To the extent that the domestic industry may be suffering, or threatened with, material injury, evidence to support reason to believe the allegedly dumped imports are a cause of that injury.

- As part of the biannual evaluation process, the Department should engage in a consultative process with interested parties and hold hearings before making a decision to self-initiate any dumping investigation.

**F. Public Dissemination of Information**

- The Department should establish procedures for protecting proprietary information and should place on the public record all information that is not proprietary.

**G. Additional Comments**

- Reference Points. In putting together the elements for a monitoring program, it is important to emphasize that the Department needs to provide, as a prominent part of that

program, the means whereby exporters and importers can determine whether or not certain product lines are likely to be the target of a self-initiated dumping investigation. In other words, importers are entitled to have a point of reference through which an importer can gauge, on a continuing, real-time basis, whether a particular product line is likely to become the target of a self-initiated dumping investigation.

This point of reference should take the form of a reference price. If entered values, on a per unit basis, are above the reference price for a particular product line, importers should be able to rely on that fact as an assurance from the Department that no dumping investigation will be self-initiated against that product line. If, however, on a continuing or consistent, rather than intermittent or sporadic, basis per unit entered values are below the reference price, importers may appropriately conclude that the product line is vulnerable to a self-initiated dumping investigation. A reference price would provide clear guidance to importers.

In terms of domestic industry injury, the Department needs to incorporate a rating system into the monitoring program. This rating system would provide general indicators to importers on the likelihood that there is reason to believe a domestic industry is suffering, or threatened with, material injury by reason of allegedly dumped exports.

- Retroactive Application of Dumping Duties. The Department, as part of implementing the monitoring programs should expressly state what will constitute critical circumstances warranting the retroactive application of antidumping duties. The fact is that,

in recent investigations, the Department has interpreted critical circumstances in ways that are totally unpredictable and counter-intuitive.<sup>4</sup>

Pursuant to the Department's regulations, unless imports "have increased by at least fifteen percent over the imports during an immediate preceding period of comparable duration, the Secretary will not consider the imports massive."<sup>5</sup> Thus, the regulations clearly and unequivocally require an increase in the volume of imports in the comparison period over the base period. The Department's monitoring program should clearly state, without exception, that the volume of a targeted textile or apparel product must have, in absolute terms, increased during the comparison period over the base period by at least fifteen percent in order for critical circumstances to exist.

#### IV.

#### CONCLUSION

Based on the information contained in the Department's request for comment, it is reasonably clear to JAG that the potential framework for a dumping monitoring program is, at best, incomplete. Certain questions contained in the Department's request for comment suggest the Department is seriously considering expanding the program beyond the five sensitive categories. In reality, the program, as envisioned with the five sensitive categories setting the outside scope of monitoring, is already overbroad and will lead to meaningless information if not narrowed.

---

<sup>4</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances In Part: Certain Lined Paper Products From The People's Republic of China*, 71 Fed. Reg. 53079, 53082 (September 8, 2006), a reduction of imports in a second comparison period at less than its rate of reduction in the first comparison period viewed to constitute massive imports.

<sup>5</sup> See 19 C.F.R. § 351.206(h)(2).

David M. Spooner  
Assistant Secretary for Import Administration  
December 27, 2006  
Page 11

In addition to narrowing the scope of the monitoring program to a manageable number of meaningful product-specific categories, the Department needs to establish markers or reference points that will allow importers to know on a real-time basis which, if any product lines, are likely to be targeted in a self-initiated dumping investigation. The Department also needs to clarify that critical circumstances will not be found to exist absent an absolute increase in import volume for a particular product line of at least fifteen percent in the relevant comparison period.

Respectfully submitted,

---

Jodie Mendoza  
Senior Vice President  
Logistics, Customs & Vendor Compliance  
Jones Apparel Group, Inc.  
250 Rittenhouse Circle,  
Bristol, PA, 19007  
Tel: 215-781-5432  
Email: jlm@jny.com