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February 19, 2010

Ms. Marideth Sandler
Chairman
GSP Subcommittee, Trade Policy Staff Committee
Office of the U.S. Trade Representative
Annex, Room F-220
1724 F Street, NW
Washington, DC 20508

Reference: 75 FR 4113 (January 26, 2010)

Subject: Generalized System of Preferences (GSP): Notice Regarding the Review of a Petition to Withdraw the Eligibility of Certain Sleeping Bags (HTSUS 9404.30.80) under the GSP Program

Docket: USTR-2010-0004

Dear Ms. Sandler:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to provide comments on the petition submitted by Exxel Outdoors Inc. to withdraw GSP status for sleeping bags classified under HTSUS 9404.30.80. RILA opposes the petition and believes that sleeping bags should maintain their eligibility for GSP duty-free treatment.

Background

The Retail Industry Leaders Association (RILA) is a trade association of the largest and most successful companies in the retail industry. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales. RILA members operate more than 100,000 stores, manufacturing facilities and distribution centers, have facilities in all 50 states, and provide millions of jobs domestically and worldwide. Our members pay billions of dollars in federal, state and local taxes and collect and remit billions more in sales taxes. RILA members are also leading corporate citizens with some of the nation's most far-reaching community outreach and corporate social responsibility initiatives.

The retail sector, along with the suppliers and customers that it serves, is an essential part of the U.S. economy. Retailers meet the needs of U.S. consumers, and in doing so are essential drivers of the U.S. economy. We also serve the global market for consumer goods and bring U.S. products to the foreign markets where they operate. Retailers provide quality jobs at all

employment levels with good benefits. The industry also creates opportunities for entry-level employment, part-time work, jobs for non-skilled workers, management training, as well as a variety of rewarding professional careers.

Imports of Sleeping Bags Should Remain Eligible for GSP Treatment

The petition argues that for many years the U.S. Government has erroneously treated sleeping bags as GSP-eligible products when, in petitioner's view, they are ineligible textile products. The petition also argues in the alternative that, even if sleeping bags are GSP-eligible products, GSP benefits should be terminated because sleeping are "highly-import sensitive as a matter of fact". Neither argument should prevail.

As discussed further below, the petition relies on a flawed legal analysis of the provisions excluding certain textiles products from GSP eligibility. Second, the petition's claim that sleeping bags are "highly import-sensitive as a matter of fact" rests on the assertion that the sleeping bags are "distributed largely through the mass market channel" – a fact that would make literally tens of thousands of consumer goods "highly import-sensitive."

The petitioner's request is also fundamentally at odds with the purpose of the GSP program. Petitioner cites to what it characterizes as a "surge" in imports from Bangladesh as an urgent situation warranting expedited review. In fact, in 2009, Bangladesh accounted for less than 2 percent of total imports of sleeping bags by value -- \$611,927 (an amount well below what is currently deemed "competitive"). With respect to sleeping bags, therefore, the GSP Program appears to have had a modicum of success in achieving the goal of promoting development in Bangladesh, one of the poorest countries in the world. That can hardly be seen as a threat to a company that boasts of being a "highly efficient, competitive domestic manufacturing company." Nevertheless, Petitioner asks the U.S. Government to use Bangladesh's small degree of success under the GSP program as a reason to kill GSP benefits for its nascent sleeping bag industry. We urge the Administration to deny that request.

Sleeping Bags Were Never "Subject to Textile Agreements"

The petition suggests that sleeping bags should not be eligible for GSP treatment because they are textile products. Products are not ineligible for GSP benefits merely because they contain textile components. The statute deems ineligible only those textile products that were "subject to textile agreements."

Sleeping bags are not and never were a product "subject to textile agreements." Petitioner's argument to the contrary confuses the authority, both under domestic law and international rules, to enter into agreements, with the existence of such agreements. Sleeping bags were never subject to any textile agreement, including those authorized under the U.S. laws implementing Multifibre Arrangement (MFA). The MFA allowed GATT members to negotiate bilateral quota agreements that would otherwise be inconsistent with their GATT obligations. In 1994, the members of the World Trade Organization (WTO) entered into the Agreement on Textiles and Clothing to phase out MFA quota agreements and transition to quota-free trade in textiles. Annex A of the Agreement on Textiles and Clothing (ATC) contains a comprehensive list, by HTS category, of all products that were subject to such agreements. Sleeping bags are not listed in Annex A, although other items falling under HTS 9404 were listed. Moreover, the absence of sleeping bags from Annex A is

consistent with the International Trade Commission's review in 1991-92 which found that sleeping bags with more than 20 percent down were covered by the GSP program.

In sum, sleeping bags are not now, nor have they ever been, ineligible for GSP-benefits.

Sleeping Bags From Bangladesh Are Not Import Sensitive

The President has the discretion to determine that a product is "import-sensitive" and therefore excluded from GSP eligibility. There is no basis for such a determination in this case. As petitioner acknowledges, the vast majority (98% in 2009) of imported sleeping bags come from China, which does not receive GSP benefits. Petitioner is not, however, complaining about those imports. In fact, petitioner continues to produce sleeping bags in China and to import the major components of sleeping bags (including shells and zippers) from China. Rather, it is the less than 1% of imports coming from Bangladesh that petitioner argues warrants eliminating GSP eligibility. The argument is illogical on its face.

Even if Bangladesh, like petitioner, imports sleeping bag components from China, that is no justification for punishing Bangladesh by removing GSP eligibility for sleeping bags that are products of Bangladesh – not China. Moreover, U.S. law does not limit GSP eligibility to products not made in the United States. The existence of "directly competitive" GS-eligible products is explicitly contemplated under the statute. The existence of such competition cannot therefore be grounds to declare products import-sensitive and therefore ineligible for GSP benefits.

Petitioner's suggestion that imports from Bangladesh are a threat is simply not credible. Petitioner attempts to establish this threat by looking at growth in imports from Bangladesh, starting from 2007 when only 1,641 sleeping bags out of a total of 11.4 million were imported from Bangladesh. In real terms, however, imports from Bangladesh have been and continue to be minimal (approximately 119,000 out of a total of over 6.5 million), and overall imports of sleeping bags are declining.

There is also no basis for petitioner's suggestion that Bangladesh is poised to overtake China as a major supplier. Bangladesh simply does not have sufficient factory capacity. Just as Bangladesh's apparel growth will never reach China's levels, neither will its sleeping bag production reach China's levels.

Quality is a Deciding Factor in Purchasing Sleeping Bags from Bangladesh Over Those Produced by Exxel

The petitioner also claims that sleeping bags are "extremely price sensitive" and suggests that price alone is the only reason that Exxel may be losing sales to others. First, there is no indication that imports from Bangladesh are entering at a lower price point than other imports. Second, contrary to Petitioner's insinuation, price is not the sole determining factor during a retailer's selection process. Retailers look at many requirements when making purchasing decisions for sleeping bags, including quality, features and breadth of offerings. Details such as quality of fill, type of fill, stitching and fabric options are examples of determining factors regarding quality and features. Moreover, licensing, special features, style (such as the higher-end mummy style sleeping bags), and suitability for outdoor use also important, if not more important, considerations than price. Many retailers also like to offer a range of sleeping bags at various price points for their customers. Retailers are therefore looking for suppliers who can offer a full range of products to consolidate sources of

supply. Many times retailers prefer vendors who have a wider range of product offerings (i.e. sleeping bags and soft sided coolers) so that the retailers can leverage efficiencies.

Petitioner, however, produces only one type of sleeping bag domestically – a low-end rectangular adult sized sleeping bag that is not suitable for outdoor use. RILA is told that petitioner also produces licensed products, especially for children, but these sleeping bags are manufactured in China, not in the United States.

Eliminating Bangladesh as a Viable Supplier Will Not Help Petitioner and Would Harm One of the Poorest Countries in the World

Retailers appreciate the importance of creating jobs in the United States. Retailers provide millions of jobs in the United States, including more than 380,000 jobs in Alabama. If GSP eligibility is eliminated for sleeping bags, however, RILA believes that sourcing is more likely to shift from Bangladesh to China. Excluding sleeping bags from GSP will most likely benefit production in China, not U.S. production. Thus, there is nothing to be gained from eliminating GSP benefits for those that sorely need them.

GSP is an important tool to assist development in the world's poorest countries while also offering American families the opportunity to purchase a variety of high-quality products at affordable prices. The Administration should consider how to expand trade benefits for the world's poorest countries, not limit them. Bangladesh is an important beneficiary country under the GSP program. As a least-developed country, Bangladesh relies upon the GSP program to create essential jobs. Excluding sleeping bags from GSP when there is no legal or factual basis for doing so would send a message that the United States has abandoned its longstanding commitment to helping developing countries.

Conclusion

For the above reasons, RILA believes that sleeping bags should remain eligible for duty-free treatment under the GSP program. Reducing tariffs and establishing dependable sourcing options are also essential for successful retail supply chains, and retailers rely on GSP as part of their sourcing strategies. The rules governing GSP eligibility are clear, and there is no basis in those rules to eliminate duty-free treatment for sleeping bags. If you have any questions, please do not hesitate to contact me at 703-600-2046 or stephanie.lester@rila.org.

Sincerely,



Stephanie Lester
Vice President, International Trade