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United States Senate
Committee on Finance

Hearing on “The Administration’s 2010 Trade Agenda”

Wednesday, March 3, 2010

10:00 a.m.

219 Dirksen Senate Office Building

Written comments for the record by the
Retail Industry Leaders Association (RILA)

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The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written comments for the hearing with United States Trade Representative (USTR) Ron Kirk on the direction and content of U.S. trade policy. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service suppliers – which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

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.

Trade with China

RILA advocates a balanced trade policy that recognizes the tremendous opportunities and benefits that trade and investment with China bring to our economy, while also effectively addressing market access barriers and other unfair trade practices that affect U.S. companies.

RILA was disappointed by the Administration’s decision to impose extraordinary duties on consumer tires imported from China. RILA supports the longstanding U.S. policy of economic engagement with China and opposes actions that cut off access to the U.S. market, particularly in this case where there was no allegation of unfair trade. This precipitous decision could lead to more such cases and have serious implications on the trade relationships that the United States has forged around the world. RILA hopes the U.S. International Trade Commission and President Obama will be more judicious in their responses to any future trade remedy petitions.

RILA supports the Strategic and Economic Dialogue and applauds the Obama Administration for its continued efforts to advance this initiative to facilitate engagement at the highest levels of government. The first round of S & ED talks last July were both productive and beneficial, and RILA looks forward to further progress coming out of future rounds of bilateral dialogue.

RILA believes that the Obama Administration should advocate policies that encourage China to move from an economy based on export growth to one based on growth in domestic consumption. Congress and the Administration should encourage China to break down the remaining barriers to foreign investment in China’s retail sector, and the pending negotiations for

a Bilateral Investment Treaty should resume and accelerate. Growth in the supply of retail outlets in China will increase consumer choice and competition in China and enable Chinese consumers to increase their purchasing options.

Textile and Apparel Imports from China

Trade in textiles and apparel has long been subject to restrictions. Decades-long global quotas under the Agreement on Textiles and Clothing (ATC) of the World Trade Organization (WTO) were finally terminated in January 2005, while restrictions on textiles and apparel from China continued until January 2009. Since that time, there has been an effort by some to convince Congress and the Administration that new limits on apparel imports from China are warranted.

RILA believes that open and fair competition in textiles and apparel creates healthier industries in the United States, China, and in our other trading partners. RILA opposes efforts to reinstate managed trade in textiles and apparel, or that would give political concessions to the textile industry as a means to enact other policy or political objectives.

Improving Trade Preference Programs and Implementing Free Trade Agreements

Improving U.S. Trade Preference Programs

The retail industry has a longstanding record of supporting trade preference programs, including the Generalized System of Preferences (GSP), Andean Trade Preferences Act (ATPA), African Growth and Opportunity Act (AGOA), Caribbean Basin Trade Partnership Act, Haiti HOPE Act and other initiatives. These programs are important trade facilitation tools that reduce tariffs and other trade barriers, and establish dependable sourcing options that are essential for successful retail supply chains. The purpose of these programs is to increase trade capacity and economic growth in our poorest trading partners, and retailers' sourcing actions are directly relevant to whether these initiatives achieve their intended goals. Retailers are most likely to use those trade preference programs that meet retailers' sourcing objectives and that do not have complicated or overly burdensome rules.

Unfortunately, in recent years, some of these programs have operated under short extensions that do not allow retailers sufficient time for long-term planning for investments in their supply chains. Extending these programs for greater periods of time, such as ten years, would encourage more use of the programs and long term investment in some of the world's poorest counties. Moreover, U.S. trade preference programs can often exclude the specific products that poor countries can make, particularly textile and apparel products and certain agricultural products.

RILA encourages Congress and the Administration to work together to expand product coverage, harmonize and simplify the rules of our preference programs, and grant them long term extensions.

Haiti

After the devastating earthquake in Haiti in January 2010, RILA applauds Congress and the Administration for working together to try to enhance trade benefits for Haiti to aid the country

in resuming apparel operations and encourage long-term rebuilding and investment. RILA welcomes the Administration's Plus One initiative for Haiti to encourage apparel importers to source from Haiti. To make this initiative a reality, RILA believes the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II) should be expanded by increasing trade preference level (TPL) limits for knit and woven apparel, removing existing exemptions under the TPLs, fixing the interpretation of the value-added rule of origin, and extending all the provisions of the HOPE program until 2020. The Caribbean Basin Trade Partnership Act (CBTPA) should also be extended until 2020.

Pakistan Reconstruction Opportunity Zones (ROZ)

RILA supports meaningful trade preferences for Afghanistan and Pakistan to help create jobs and counter the recruitment efforts of the al Qaeda and Taliban. We urge Congress and the Administration to act expeditiously to enact Reconstruction Opportunity Zones (ROZ) legislation (S. 496, introduced by Senator Cantwell), and to expand and revise it in several areas, including expanding product and geographical coverage, limiting disclosure requirements, and finding a bipartisan and workable solution on labor conditions. The ROZ program represents an important opportunity for the United States to foster economic development, advance social stability, further security in the region and to make good on the promises of a closer economic relationship with Pakistan and Afghanistan.

For the ROZ initiative to be effective, duty-free treatment should be extended to all textile and apparel products, and especially to cotton trousers and shorts and cotton knit tops. These products are most likely to generate employment opportunities. Cotton knit shirts and cotton trousers are vitally important to Pakistan, yet these products face U.S. duties that average around 17 percent. Configuring the ROZ program to include these items will give Pakistan a fighting chance in this competitive industry.

We also urge Congress to revisit the limited areas in Pakistan that are eligible to use the ROZ program. Limiting ROZ investment to extremely remote areas that are experiencing intense conflict and are not yet mature for industrial growth would only delay job creation. Therefore, we encourage you to consider expanding the geographic areas in Pakistan to include areas that are currently capable of production. All of Pakistan, not just the tribal areas on the Northwest Frontier, is being targeted by extremists.

RILA also notes that controversial and unworkable labor provisions included in the House-passed ROZ legislation has caused momentum for ROZ legislation to come to a screeching halt. RILA encourages policymakers to work with stakeholders to find a bipartisan solution for workable labor conditions, based on longstanding criteria in U.S. trade preference programs, including the Generalized System of Preference (GSP) and the African Growth and Opportunity Act (AGOA). RILA believes that S. 496 is a good basis to start considerations on any labor provisions included in the final ROZ legislation.

Trade Development Agreements

RILA also believes that preferences should be modified over the long term to encourage a sustainable two-way system that benefits United States importers and exporters, as well as our trading partners. Trade preferences have been beneficial by introducing developing countries to the benefits of international trade, but those benefits are limited due to their inherent one-way structure, restrictive rules of origin and onerous documentation requirements. Moreover, as

countries become more developed, our trade preference programs discourage further growth by cutting off access to the U.S. market, rather than encourage further development. RILA believes that Congress and the Administration should consider modifying our trade preference programs to provide clear incentives and timetables for trading partners that become more economically advanced to open their markets to U.S. goods, thereby creating opportunities for U.S. exporters and providing foreign consumers and businesses with high quality U.S. goods and services at competitive prices. This new trade policy tool could be called trade development agreements (TDAs) and would be a bridge to carry trading relationships from traditional one-way preference programs to long term and sustainable two-way trading relationships.

Whether this new trade tool is called a TDA or something else, it should provide significant benefits through trade liberalization in goods and services, transparency in regulatory trade practices, intellectual property protection, and other reductions in tariffs and non-tariff barriers. All of these areas will help to create dependable sourcing and export growth opportunities for retailers. To provide the most benefit, these trade tools should ultimately be comprehensive and commercially meaningful. TDAs should include: tariff eliminations, services trade liberalization, trade facilitation measures, strong intellectual property rights protections and flexible rules of origin.

Free Trade Agreements

RILA strongly supports the pending free trade agreements with Colombia, Panama and South Korea and encourages the Administration to take concrete actions in 2010 to advance these agreements, including a high-level, Administration-wide initiative to encourage broad support for these agreements, and submitting the agreements to Congress for approval.

RILA believes the Obama Administration's plan to participate in negotiations on the Trans-Pacific Partnership (TPP). RILA strongly supports the negotiation of a comprehensive free trade agreement with the proposed participants (Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore and Vietnam) in the TPP will foster economic growth for partner nations and serve as a good launching pad for future expansion of the alliance to other partners in the region.

Fair Application of Trade Remedy Laws

While the benefits of trade spread across many sectors of the U.S. economy and to U.S. consumers, RILA recognizes that some entities may be harmed by international competition. U.S. trade remedy laws can provide an appropriate and reasonable venue for U.S. industries that are injured by unfair trade. The Administration should recognize that the administration of these laws involves a significant amount of subjectivity within the administering agencies, and it should be a priority to ensure that these laws are implemented fairly and objectively, taking into account the impact of such actions on all stakeholders. All trade remedy actions should be considered on their merits and should not be initiated, self-initiated or determined as a political trade-off for other policy priorities.

Creating Certainty for Importers

Retailers need certainty in the marketplace to be able to make informed business decisions. U.S. trade remedy laws (antidumping (AD) and countervailing duty (CVD) laws) are inherently

unpredictable because parties cannot know in advance whether products they import may later be subject to AD/CVD duties. There is one element of the U.S. trade remedy system that could be modified to provide more certainty than currently exists, and this is to change the current “retrospective” system of AD/CVD duty collections to a prospective system. The United States is the only country that employs a retrospective system for collecting AD/CVD duties whereby duty deposit rates are established at the end of an investigation, but the final duty bills are not calculated until after a review is completed, which can be a year or more after the product was imported. This retrospective system creates enormous uncertainty for retailers’ supply chains because the actual AD/CVD duty liability is not determined until long after the goods have been imported into the United States and sold on retail shelves. Thus, as long as an AD/CVD order is in place (which can be for decades), companies are unable to make rational sourcing decisions. Even more than the duties, this uncertainty in the supply chain is one of the most detrimental aspects of U.S. trade remedy law. Retailers will pay fair (or “undumped”) prices for goods, and they simply need to know what that price is at the time they make sourcing decisions.

One possibility for Congress and the Administration to consider is a prospective normal value system, such as those used by some of our major trading partners, which would eliminate uncertainty. Under a prospective system, final AD/CVD duties are assessed at the time of importation, like normal customs duties. A prospective system would allow stronger duty collection rates since the total duty bill is collected upon importation. The Government Accountability Office (GAO) studied U.S. Customs and Border Protection’s (CBP’s) efforts to collect duties and found that since 2001, over \$600 million in AD/CVD duties were uncollected - in large part because of retrospective nature of the U.S. duty collection system.¹ The GAO therefore recommended studying the potential benefits of moving to a prospective system.

A prospective system would also resolve other WTO challenges to U.S. trade policy, such as zeroing and CBP’s requirement for bonds on shrimp imports. U.S. zeroing policy and the shrimp bonds have been found to be inconsistent with WTO obligations.

RILA strongly supports moving the current retrospective system to a prospective system and respectfully asks Congress and the Administration to consider adopting this proposal.

Administration Needs Greater Focus on ‘Trade Facilitation’

The Department of Homeland Security, and specifically the U.S. Customs and Border Protection (CBP) plays a critical role in promoting the dual goals of protecting our nation’s borders and facilitating legitimate trade flows. While we recognize that security is an essential concern, RILA believes these two goals are equal in importance to achieve the overall well-being of our country. In other words, CBP should not focus on security at the expense of trade facilitation. Congress and USTR play a critical role through oversight and in the interagency process to ensure that CBP continues to recognize the importance of trade facilitation.

In particular, RILA calls to your attention two customs issues that are very important to retailers: the longstanding practice of valuing imports based upon the “first sale rule” and a CBP proposal

¹ GAO-08-876R, Collecting Antidumping and Countervailing Duties (July 2008)

to change country of origin classifications from the judicially-developed “substantial transformation” methodology to a “tariff shift” methodology.

First Sale Rule

In January 2008, CBP released a proposal that would no longer allow importers to calculate the duty owed for imports to be based upon the “first sale” price between the manufacturer and an intervener. Instead, CBP would calculate the duty based upon “the price paid in the last sale occurring prior to the introduction of the goods into the United States,” thereby eliminating the first sale rule. This action would have the effect of raising the duty liability for importers by raising the value of products by which duty rates are applied. The action would contradict several U.S. court decisions in support of the first sale rule. The additional costs could effectively raise taxes by hundreds of millions of dollars at a time when businesses and consumers are already facing uncertainty in a volatile economic environment.

Congress recognized the enormity of CBP’s action and acted quickly in May 2008 to include “Sense of the Congress” language in the Farm Bill (Public Law No: 110-246) that put a freeze on CBP moving forward with its proposal until after January 1, 2011. As we approach that date, RILA encourages Congress and the Administration to clearly signal their support for the continued use of the first sale rule and to prevent any action to eliminate the first sale rule beyond 2011.

Proposed Change on Rule of Origin

Another concern of retailers is CBP’s proposal to eliminate “substantial transformation” as the rule of origin for general application, and instead apply the NAFTA Marking Rules more broadly. These “tariff shift” rules will prompt significant transition costs for importers and would affect origin determinations not only for marking purposes, but also for other purposes such as government procurements.

RILA filed comments with CBP in 2008 noting that CBP’s “proposed change, which would sweep aside a century of settled law, would have enormous consequences for the economy, provide minimal measurable benefits, and should not be undertaken without extensive further study.” RILA encourages the Administration to consult more closely with stakeholders to address continuing concerns before proceeding with this proposal.

Affordable Footwear -- Lowering the Cost of a Basic Necessity

RILA supports passage of the Affordable Footwear Act (S. 730), legislation that repeals a Smoot-Hawley tariff on low-cost and all children’s footwear. The U.S. tariff system with respect to footwear is highly regressive in that it charges higher rates of duty for lower-valued merchandise. With tariffs reaching as high as 67% for a children’s sneakers, footwear duties act as a regressive tax on low- and middle-income American households, including single-parent households, who spend a larger share of their disposable income on basic necessities.

This legislation receives widespread bipartisan support in both the House and Senate, and S. 730 is currently cosponsored by 19 Senators. Given the strong support for the legislation, the lack of

domestic opposition and the important stimulative benefits it will provide to American middle-class families, eliminating these duties would provide targeted and timely relief to ease the cost of a basic necessity.

Repeal the Continued Dumping and Subsidies Offset Act (CDSOA)

Enacted in 2001, the Continued Dumping and Subsidies Offset Act (CDSOA, also known as the “Byrd Amendment”) required CBP to distribute duties it collected under the antidumping and countervailing duty laws to companies that supported the original petition for imposition of the duties. Companies have received tens of millions of dollars in windfall subsidies that are not contingent upon whether the money is spent to create or protect U.S. jobs. Available data indicates that CDSOA has caused over \$2.385 billion dollars to be diverted from the U.S. Treasury and given to a small number of companies. CDSOA was partially repealed in 2005, yet disbursements under the program still continue today.

CDSOA disbursements

FY 2001	\$231,201,890.83
FY 2002	\$329,871,463.94
FY 2003	\$241,301,429.00
FY 2004	\$284,044,599.00
FY 2005	\$226,051,863.09
FY 2006	\$380,562,870.40
FY 2007	\$264,361,332.40
FY 2008	\$180,360,227.37
FY 2009	\$247,718,477.35

**Total CDSOA
Disbursements \$2,385,474,153.38**

Source: Customs and Border Protection data

In addition to these figures, more money will be disbursed in November 2010 as further entries are liquidated, and another \$75.8 million is being held by CBP while litigation is pending. The World Trade Organization has ruled that the CDSOA violates the United States’ international trade obligations. Eleven countries were authorized to retaliate against U.S. exports, and the European Union and Japan continue to impose retaliatory tariffs today.

In a time of budget shortfalls and soaring deficits, RILA believes that this program should be completely repealed before any more money is diverted from the U.S. Treasury to private companies. Further, in a time of economic uncertainty and when the Administration is undertaking an initiative to double U.S. exports over the next five years, Congress and the Administration should actively work to have the retaliatory tariffs lifted, and this will only happen when the CDSOA disbursements cease.

Conclusion

RILA appreciates the opportunity to submit these trade policy recommendations for the 2010 trade agenda as we all share the common goals to boost U.S. economic growth and competitiveness, promote U.S. leadership in the international economy, and to double U.S. exports over the next five years. We look forward to working with you to advance these and other shared goals.

Should you have any questions regarding this matter, please feel free to contact me at (703) 600-2046 or stephanie.lester@rila.org.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Lester". The signature is written in a cursive style with a long horizontal flourish at the end.

Stephanie Lester
Vice President, International Trade