September 18, 2009

Customs and Border Protection
Office of International Trade
Regulations and Rulings
Attention: Trade and Commercial Regulations Branch
799 9th Street, N.W.
Washington, D.C. 20229

Ref: **GENERAL NOTICE PROPOSED MODIFICATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF CERTAIN WOMEN'S PULLOVERS FOR PREFERENTIAL TARIFF TREATMENT, CBP BULLETIN AUGUST 20, 2009**

To Whom It May Concern:

On behalf of the American Apparel & Footwear Association (AAFA) and the Retail Leaders Industry Association (RILA), we are writing to express our opposition to the referenced modification of ruling NY N024671.

By way of background, AAFA is the national trade association representing apparel, footwear and other sewn products companies, and their suppliers, which compete in the global market. AAFA's mission is to promote and enhance its members' competitiveness, productivity and profitability in the global market by minimizing regulatory, commercial, political, and trade restraints.

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.

As we understand it, HQ H052137 seeks to modify N024671, which had confirmed Singapore Free Trade Agreement (FTA) preferential status for knit pullovers classified in HTSUS 6110.20.2079 originating under the Singapore FTA. The garment in question is a cotton knit pullover with a pocket with a buttoned tab closure. The fabric of the main body of the shirt meets the Singapore FTA rules of origin. The fabric of the pocket is also made from cotton knit but does not originate in the U.S. or Singapore. The argument in HQ H052137 is that it is not

necessary to determine the essential character of the shirt because all of the fabric is cotton knit. The argument further alleges that because there is no component that determines classification, both the shirt and the pocket fabric have to meet the rule. Since the pocket does not meet the rule, the garment is deemed to no longer meet the rules of origin under the FTA and is therefore denied preferential treatment.

We disagree with this argument for several reasons and urge that the proposed modification be discarded. As a general matter, rulings such as this one significantly undermine policy objectives established by the President and the U.S. Congress to expand trade ties with certain trading partners. By negotiating, approving, and implementing the Singapore FTA, the President and U.S. Congress have both asserted that this FTA (and others) is the national public interest. One of the goals of the FTAs is to eliminate trade barriers and promote business and trade flows between the United States and our trading partners, such as Singapore. Narrow and unpredictable rulings such as this one published by CBP severely undermine the objectives of the FTA by discouraging businesses from utilizing the FTA.

More specifically, first, we disagree with the CBP argument that the component that determines the classification of the good in this case includes fabric that forms the pocket in addition to the main body fabric of the garment.

We understand that CBP has argued that no particular fabric component of the pullover determines its classification because all components are made of cotton knit fabric. Therefore Chapter Rule 2 to the tariff shift rules of origin for Chapter 61 of the Singapore FTA (Chapter Rule 2) does not limit the tariff shift rule to the main body fabric only.

The rule of origin for the Singapore FTA, as with nearly all other FTAs, is premised on there being a determination regarding the component that determines the classification of the garment. GN 25(o), Chapter 61, Chapter Rule 2 of the Harmonized Tariff Schedule (HTS) states in relative part:

> For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good.

CBP's binding rulings are consistent in holding that pockets, or other findings, trimmings, small components and interior fabrics are never the component that determines the classification of a finished apparel article.

CBP disregarded a fur tail when classifying a scarf because the fur tail did not "contribute to the character or usefulness of the scarves at issue. The scarves could still function as scarves without the fur tails. The character of the scarves has not changed due to the presence of the fur tails." (HQ 084262 dated June 21, 1989). Similarly, the pocket on this pullover does not contribute to the character or usefulness of the pullover. The top can still function as a top without the pocket. The character of the pullover has not changed due to the presence of the pocket.

HQ 086504 (December 27, 1990), CBP cited HQ 080817 (August 31, 1987) stating,

> "It is our understanding that apparel was intended to be classified under the [HTSUSA] usually according to its outer shell. * * * Accordingly, the goods of Chapters 61 and 62 with relatively unimportant linings, shoulder pads, **pockets**, etc., should be classified according to Subheading Note 2(A), Section [XI], without considering those trimmings. However, where those goods have parts or accessories that contribute materially to their character or usefulness (for example, heavy weight linings which provide a substantial degree of warmth to the wearer), then the outer shells and other significant portions must be considered in determining the proper classification of those goods. In this situation, we believe it is appropriate to utilize Subheading Note 2(B)(a) of Section [XI]." (Emphasis added.)

Based on this premise, CBP has ignored the following types of items when classifying apparel:

- Lining,
- Hanger loop,
- Binding,
- Chin guard,
- Collar,
- Cuff,
- Waistband,
- Ruffle,
- Lace,
- Yoke.

CBP has further applied this premise and these rules to its analysis for the purpose of tariff shift rules in various free trade agreements[1].

CBP ruled on a woman's top made of originating fabric for the outer shell and non-originating fabric for the lining. Both fabrics were of the same chief weight and of the same knit or woven construction. CBP held that the top qualified for the FTA because the component that determined the classification of the top was the outer shell fabric. CBP did NOT combine both fabrics and declare that they both determined the classification because they were of the same chief weight and knit or woven construction.

CBP ruled on a jacket made of originating fabric for the outer shell, originating fabric for certain trims, and non-originating fabric for other small components and lining. All of these fabrics were of the same chief weight and the same knit or woven construction. CBP held that the jacket qualified for the FTA because the component that determined the classification of the jacket was the all of the outer shell fabric, disregarding the non-originating trims and lining. CBP did NOT combine all of the fabrics and rule that they all determine the classification because they were all of the same chief weight and knit or woven construction.

[1] We have not included the ruling numbers or other identifying details to avoid CBP proposing to revoke these rulings in addition to the ruling at issue.

CBP ruled on sleepwear made of originating fabric for the outer shell and non-originating fabric for findings such as straps, binding tape and the bottom of the pajamas. All of these fabrics were of the same chief weight and the same knit or woven construction. CBP held that the sleepwear qualified for the FTA because the component that determined the classification of the sleepwear was the main fabric of the top portion of the sleepwear. CBP did NOT combine all of the fabrics and find that they all determine the classification because they were all of the same chief weight and knit or woven construction.

These are but a few examples of rulings in which CBP has appropriately disregarded items similar to pockets when applying the concept of "component that determines classification" to the tariff shift rules in FTAs.

Second, it would be incorrect, confusing, and lead to inconsistent results if CBP were to consider a pocket, or other such findings, trimmings, small components and interior fabrics as described above as part of the component that determines the classification of the good when made of the same chief weight and knit or woven fabric construction, but not when the fabrics differ.

For instance:

- 100% cotton interlock main body fabric, 100% cotton interlock pocket fabric, both would be required to originate.
- 100% cotton interlock main body fabric, 60% cotton/40% polyester rib knit pocket fabric, both would be required to originate.
- 100% cotton interlock main body fabric, 50% cotton/50% polyester interlock pocket fabric, the pocket would not be required to originate.
- 100% cotton interlock main body fabric, 60% polyester/40% cotton interlock, the pocket would not be required to originate.
- 100% cotton interlock main body fabric, 100% cotton twill pocket fabric, the pocket would not be required to originate.

This yields a result that is inconsistent and contrary to the plain language and intent of the FTA. This is a highly subjective standard, particularly since CBP is not arguing that the material has to be identical. At what point does the material become dissimilar enough that it ceases to be part of the component that determines classification? Will CBP begin lab testing the fiber content of trims on garments to determine if they should be originating?

Finally, we are concerned that this decision could create an unpredictable precedent that makes it harder for the trade to understand, interpret, and comply with rulings in this and other FTAs. The logic of the ruling seems to reinterpret the term "component that determines classification" and attempt to add a pocketing requirement to an FTA where there is no such language.

The entire concept of the component that determines classification is to focus the rule of origin requirement and the compliance onto the most important element of the garment. This is reflected in the Singapore FTA, as in many other FTAs. Policy-makers have long argued that the purpose of this approach is to ensure that the key value added (the assembly and the inputs that make up the most important component of the garment) come from the parties to the FTA.

Conversely, other components are not included in the origin requirement to provide flexibility, to relieve documentation burdens, and to make sure that origin determinations for lesser components do not disqualify garments whose major value is derived from the FTA parties. In several limited cases, FTAs impose additional origin requirements on these lesser components – although they are not actually deemed part of the component that determines the classification of the garment. In fact, in the FTA with Central American countries, there is a requirement for pocket bag fabrics, in addition to requirements for sewing thread, certain linings, and elastic strips. These additional requirements are clearly identified in the Central America FTA and implementing legislation. We note that while the Singapore FTA also includes an additional requirement for linings, it does not include a requirement for pocketing or pocket bag fabrics.[2] The appropriate place to determine if Singapore should now be subject to an additional origin rule for pocketing is at the negotiating table with the Singapore Government and then through a change in U.S. law, not through the Customs Bulletin.

In its proposed modification, CBP is effectively arguing that all fabrics of identical construction and chief weight are to be grouped together for the purpose of defining the component that determines classification and meeting the tariff shift rule. There is no basis for such an opinion. Moreover, such logic, if applied throughout the system of FTAs, would change the meaning of the concept of the component that determines classification that has been a central feature of the textile rules of origin for many FTAs for nearly two decades.

One outcome of this decision is that companies will now have to examine all lesser components to determine whether they now form or contribute to the component that determines the classification of a garment. Even if they do not, the uncertainty generated by this proposed modification may lead companies to keep detailed records and information on lesser components or even force them to source those components in a manner that would not trigger a future disqualification of benefits. This would dramatically drive up the cost of compliance with any given FTA and discourage trade with those countries. Because the FTAs are reciprocal, such adverse result would be felt equally by exporters and importers.

In conclusion, we strongly urge CBP to reconsider this proposed modification. We do not believe the specific facts to this case support the conclusion reached in the modification. Moreover, we are concerned that this modification would set a damaging precedent that would lead to uncertainty and, ultimately, discourage use of this and other FTAs.

Sincerely,

Stephen Lamar
Executive Vice President
American Apparel & Footwear Association

Stephanie Lester
Vice President, International Trade
Retail Industry Leaders Association

[2] Singapore FTA also does not contain a requirement for originating narrow elastic strips and sewing thread.