April 14, 2021

Mr. Robert Fairweather
Acting Director
Office of Management and Budget
1725 17th Street, N.W.
Washington D.C. 20503

Dear Acting Director Fairweather:

On behalf of the National Council of Textile Organizations (NCTO), I am writing in regard to a recent proposal to direct U.S. Customs and Border Protection (CBP) to collect Section 301 duties on Chinese merchandise imported under the Section 321 *de minimis* exemption (RIN-1515 AE57: Excepting Merchandise Subject to Section 301 Duties From the Customs De Minimis Exemption). NCTO strongly encourages the Office of Management and Budget (OMB) to reopen consideration of and grant approval to this much needed change in CBP regulations.

NCTO represents the full spectrum of the U.S. textile sector, from fiber through finished sewn products, as well as suppliers of machinery, chemicals, and other products and services with a stake in the prosperity of our industry. Our members are domestic manufacturers responsible for a U.S. supply chain that produced $64.4 billion in output in 2020 while employing nearly 530,000 workers nationwide. According to the U.S. Department of Commerce, every job directly supplied by the U.S. textile sector provides three additional jobs throughout the economy. As such, direct and indirect employment supplied by the U.S. textile industry is responsible for almost 2.12 million American jobs. The vast majority of these jobs are located in underserved rural areas, functioning as a springboard for workers out of poverty into good-paying employment for generations.

<u>Broad-Based Concerns with Section 321 Waivers</u>

A *de minimis* shipment, also referred to as a Section 321 informal entry, allows for goods valued below an $800 threshold to enter the United States free of duty and certain entry fees when imported directly by one person on one day. Due to the nature of Section 321 shipments, the U.S. textile and apparel industry is likely more directly and adversely impacted by this tariff waiver mechanism than any other individual sector of the U.S. economy. CBP now estimates that over two million Section 321 entries cross our borders each day. In that the overwhelming majority of purchases in our sector are valued at less than $800, CBP acknowledges that textiles and apparel are especially vulnerable to Section 321 waivers.

This provision is now being coupled with e-commerce to allow mass distributors, foreign manufacturers, and importers to avoid payment of U.S. customs duties. The negative ramifications of the sizable duty avoidance on these transactions for U.S. manufacturers and workers are substantial and include:

- Increased import price pressure on domestic manufacturers of various types of consumer items that routinely sell for less than $800 such as – apparel, footwear, home furnishings, toys, consumer electronics, flatware, auto parts, etc.
- An inability to properly identify and block the importation of adulterated products posing a health and safety risk to consumers.
- An inability to properly identify and block imports of counterfeit products that violate intellectual property laws.
- Enhanced ability of countries like China to access the U.S. market, despite China's failure to provide reciprocal access to its markets and its persistent illegal and unfair trading practices.
- Denial to the U.S. Treasury of potentially billions in duties normally applied to these imports.
- Undermining of existing U.S. free trade agreements and preference programs as duty-free benefits are available without regard to source or negotiated origin requirements.
- Weakening of the U.S. government's leverage in negotiating new fair and reciprocal trade deals as 321 grants unilateral duty-free access to the U.S. market.
- An inability to collect and publish accurate U.S. import data, which is necessary to inform trade policy and enforcement decisions, because harmonized tariff schedule classification information is not required for shipments entered under the Section 321 "release from manifest" process.

China 301 Penalty Duty Avoidance

In addition to the broad-based issues noted above, Section 321 imports currently allow for circumvention of existing Section 301 duties intended to address China's illegal and unfair trading practices. As such, imported merchandise from China that enters under a Section 321 waiver is exempt from all normal tariffs and any penalty duties assessed under the current 301 case.

This unreasonable and unnecessary duty exemption severely undermines the purpose and value of the existing Section 301 determination against China as an effort to address its longstanding predatory trade practices. This is especially adverse for domestic textile manufacturers who have endured China's meteoric export growth into the U.S. market in recent decades. For example, in 2019, China alone accounted for 42 percent of the record U.S. trade deficit in textile and apparel products, which totaled $102 billion.[1] China's share of the 2019 U.S. textile and apparel trade deficit was nearly $30 billion greater than the next largest contributor – Vietnam.

China's dominance of global textile markets has undoubtedly been aided by a slew of unfair and illegal practices that include substantial state ownership of manufacturing facilities, state-sponsored production subsidies, state-sponsored export subsidies, and rampant violations of intellectual property rights. More recently, an abundance of evidence has surfaced demonstrating that China has added slave labor camps to its arsenal of predatory trade practices. Based on U.S. government reports and various news articles, it is clear that the government of China is engaged in a systemic program of atrocities against Uyghur and other Muslim minority groups in the Xinjiang Uyghur Autonomous Region (XUAR). These atrocities range from relocation to re-education and forced labor camps to genocide. U.S. government reports have directly tied forced labor activities to the production of cotton fiber and textiles in the XUAR. As a result, on January 13, 2021 CBP issued a Withhold Release Order (WRO) on imports of cotton fiber and downstream cotton-based products, such as apparel made in Xinjiang province.

Xinjiang is a major cotton, textile, and apparel production center in China. In fact, 20 percent of the global cotton crop is estimated to be grown in the Xinjiang region. Further, Xinjiang represents 84 percent of China's total cotton production. It is only logical to assume that a large component of China's cotton-based textile and apparel production, including items covered under the current 301 determination, are corrupted due to the human rights abuses taking place in the XUAR.

Consequently, a decision to not approve the CBP ruling to deny Section 321 benefits to goods covered by the 301 determination will continue to allow lucrative tariff benefits to merchandise manufactured under the abhorrent human rights abuses occurring in China's major textile and apparel production region of Xinjiang province.

Conclusion

There has been an exponential growth of shipments to the United States in recent years that qualify for Section 321 duty-free treatment. U.S. manufacturers of textiles, apparel and other consumer goods that routinely sell for less than the $800 *de minimis* threshold increasingly find their markets and workforce threatened by this tariff avoidance

[1] OTEXA Trade Balance Report

scheme. The Biden administration should undertake an exhaustive review of this problem to develop the policy changes needed to mitigate the damaging impact of Section 321 waivers on U.S. workers and manufacturers. In the interim, it is critical that the OMB and CBP take reasonable steps, such as denying Section 321 benefits to goods covered under the existing China 301 determination. Doing so would be a valuable first step toward limiting the dangerous and growing exploitation of this tariff waiver mechanism.

Thank you for your consideration of our views on this important issue and please let me know if you have any questions regarding this matter.

Sincerely,

Kim Glas

Kim Glas
President & CEO
National Council of Textile Organizations (NCTO)

cc: John Leonard, Acting CBP Executive Assistant Commissioner for Trade