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Customs & International Trade Law

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The Vietnam Trade Facilitation Alliance
The Future of Trade and Trans-Pacific Partnership (TPP): What You Need to Know Today

November 14, 2016
Ho Chi Minh City, Vietnam
Welcome & Opening Remarks

Nate Herman, Senior Vice President, Supply Chain, American Apparel & Footwear Association
Welcome Address

Mary Tarnowka
Consul General
U.S. Embassy and Consulate in Vietnam
What’s Ahead for Trade and TPP

Nate Herman, Senior Vice President, Supply Chain, American Apparel & Footwear Association

Herb Cochran, Executive Director, AmCham
Vietnam
U.S. Election Summary

• Donald J. Trump elected 45th President
  – Hillary Clinton wins popular vote

• Republicans retain control of both House and Senate
  – Smaller majorities than in 114th Congress
Presidential Election
2016 Electoral College Results

Clinton 232
Trump 290
Undecided 16

Source: CNN
Make Up of the 115th Congress

Partisan Control of the U.S. Senate
115th Congress

- GOP 51
- Dem 48
- Undecided 1

Total 100

Partisan Control of the U.S. House
115th Congress

- GOP 238
- Dem 193
- Undecided 4

Total 435

Source: CNN
Impact on Trade

Trump wants to:
• Withdraw from TPP
• Renegotiate NAFTA
• Negotiate “better” trade agreements
• Negotiate bilateral trade agreements
• Label China a currency manipulator
• Impose punitive tariffs against China
• Close down Mexican “sweatshops”
• Get tough on Chinese labor and environmental practices
What’s Next for TPP?

• No TPP this year
  – "It's certainly not going to get brought up this year," Senate Majority Leader Mitch McConnell
  – “…this important agreement is not ready to be considered during the lame duck and will remain on hold until President Trump decides the path forward,” House Ways & Means Committee Chairman Kevin Brady
What’s Next for TPP?

• But TPP is not dead
  – “TPA [trade promotion authority] is still in place if the next president wants to negotiate trade agreements,” Senate Majority Leader Mitch McConnell
  – "Moving forward, I remain committed to working with my colleagues in Congress and the administration to resolve outstanding concerns so that TPP can achieve its full economic potential," Senate Finance Committee Chairman Orrin Hatch
  – “We will work closely with the new administration on this effort,” House Ways & Means Committee Chairman Kevin Brady
What’s Next for TPP?

• Other TPP countries moving forward
  – Japan – On November 10, lower house of Diet (Parliament) approved TPP
  – Other countries starting their legislative process
What’s Next for TPP - Timeline

• U.S. president must do the following before TPP enters into force:
  1) Submit information and documents before vote
  2) Sign bill into law
  3) Certify other countries have come into compliance
  4) Deposit instruments of ratification
  5) Issue proclamations and regulations
What’s Next for TPP - Timeline

Days from Signing Until Submission

Days from Submission Until Entry Into Force

Countries:
- Israel
- Canada
- NAFTA
- Jordan
- Chile
- Singapore
- Australia
- Morocco
- CAFTA-DR
- Bahrain
- Oman
- Peru
- Colombia
- Panama
- Korea

www.aafaglobal.org | @apparelfootwear
Vietnam is Still Growing

U.S. Apparel Imports from Vietnam
(In Billions of Square Meter Equivalents)

Source – Office of Textiles and Apparel, U.S. Department of Commerce
Note – 2016* = Year-Ending September 30, 2016

www.aafaglobal.org | @apparelfootwear
Vietnam is Still Growing

U.S. Footwear Imports from Vietnam
(In Actual # of Pairs)

Source – U.S. International Trade Commission’s Trade DataWeb
Note – 2016* = Year-Ending September 30, 2016
Vietnam is Still Growing

U.S. Travel Goods Imports from Vietnam
(In Actual # of Bags)

Source – U.S. International Trade Commission’s Trade DataWeb
Note – 2016* = Year-Ending September 30, 2016
Vietnam – Opportunities

• Vietnam – Europe Free Trade Agreement
  – Implemented 2017 or 2018

• RCEP
  – Regional Comprehensive Economic Partnership
  – Pan-Asia Free Trade Agreement

• WTO Trade Facilitation Agreement
  – Make it easier to trade
  – Vietnam has acceded to the agreement
  – Will go into effect when 110 countries ratify
Why is TPP Important?

Distribution of Duties on U.S. Imports From Vietnam - 2015

Knit Apparel, 44.3%
Woven Apparel, 24.9%
Footwear, 20.4%
Travel Goods, 4.5%
Other, 5.8%
Total = $2.8 Billion

Source: USITC Dataweb
Why is TPP Important?

• Apparel, footwear, and travel goods duties eventually go to zero
  – Duty-free immediately for all travel goods and all but 18 footwear items

• Some at Entry Into Force (EIF); some over long period of time

• Most see some reduction on EIF

• Not just the United States, but also 10 other countries
  – Single sourcing platform to serve entire TPP region
Why is TPP Important?

Rules of Origin

• Easiest: Travel Goods
  – Cut and sew or tariff shift

• Harder: Footwear
  – Choice: Tariff shift or Regional Value Content (RVC); NO Third Country Uppers

• Hardest: Apparel
  – Strict Yarn Forward; some Flexibilities
The Future of Trade and TPP After the Elections
What You Need to Know Now

14 / 11 / 2016

Herb Cochran
Executive Director
MIDDLE CLASS CONSUMER SPENDING

OUTER RING: 2030 in trillions, USD (projected)
INNER RING: 2009 in trillions, USD

Asia Pacific $32.9

+571% GROWTH

While increasing Chinese spending tops the news, the East Asia Bureau of Economic Research forecasts that spending in India and Indonesia will grow at similar rates.
越南 - 美国贸易，2000 - 2020e
（美元十亿美元 • 不包括TPP的影响）
U.S. Imports from ASEAN

US$ billion


- Vietnam
- Myanmar
- Laos
- Cambodia
- Brunei
- Indonesia
- Malaysia
- Philippines
- Thailand
- Singapore
U.S. Textile & Apparel Imports
US$ billion

- China
- 2nd Tier
- Other

U.S. Textile & Apparel Imports fr "2nd Tier" Countries
US$ billion

- Vietnam
- India
- Indonesia
- Bangladesh
- Mexico
Chapter 30 Final Provisions

- TPP Chap 30.5 Entry into force
  - 60 days after all 12 have ratified, notified
  - Two years and 60 days [Jun 1, 2018] after signing [Feb 4, 2016], if at least 6, accounting for 85% of the combined GDP have ratified, notified;
  - If neither of the above two apply, then 60 days after at least 6, accounting for 85% of the combined GDP, have ratified, notified.
### TPP Ratification: at least six countries with 85% of Combined GDP

<table>
<thead>
<tr>
<th>Country</th>
<th>GDP in 2013</th>
<th>%</th>
<th>Cumulative</th>
<th>100% -</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.</td>
<td>16,768.1</td>
<td>60.3%</td>
<td>60.3%</td>
<td>39.7%</td>
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<tr>
<td>Japan</td>
<td>4,919.6</td>
<td>17.7%</td>
<td>77.9%</td>
<td>82.3%</td>
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<tr>
<td>Canada</td>
<td>1,839.0</td>
<td>6.6%</td>
<td>84.5%</td>
<td>93.4%</td>
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<tr>
<td>Australia</td>
<td>1,563.9</td>
<td>5.6%</td>
<td>90.2%</td>
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<tr>
<td>Mexico</td>
<td>1,258.8</td>
<td>4.5%</td>
<td>94.7%</td>
<td>95.5%</td>
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<tr>
<td>Malaysia</td>
<td>323.3</td>
<td>1.2%</td>
<td>95.8%</td>
<td>98.8%</td>
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<tr>
<td>Singapore</td>
<td>302.3</td>
<td>1.1%</td>
<td>96.9%</td>
<td>98.9%</td>
</tr>
<tr>
<td>Chile</td>
<td>276.7</td>
<td>1.0%</td>
<td>97.9%</td>
<td>99.0%</td>
</tr>
<tr>
<td>Peru</td>
<td>201.9</td>
<td>0.7%</td>
<td>98.7%</td>
<td>99.3%</td>
</tr>
<tr>
<td>New Zealand</td>
<td>187.9</td>
<td>0.7%</td>
<td>99.3%</td>
<td>99.3%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>171.2</td>
<td>0.6%</td>
<td>99.9%</td>
<td>99.4%</td>
</tr>
<tr>
<td>Brunei</td>
<td>16.1</td>
<td>0.1%</td>
<td>100.0%</td>
<td>99.9%</td>
</tr>
<tr>
<td><strong>Combined GDP</strong></td>
<td><strong>27,828.7</strong></td>
<td><strong>100.0%</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: [http://www.tradingeconomics.com](http://www.tradingeconomics.com)
TPA, Sec 6 (a) (1) (G)

Implementation of Trade Agreements (a) In general (1) Notification and Submission — Any agreement entered into under section 3(b) shall enter into force with respect to the United States if (and only if) — (G) the President, not later than 30 days before the date on which the agreement enters into force with respect to a party to the agreement, submits written notice to Congress that the President has determined that the party has taken measures necessary to comply with those provisions of the agreement that are to take effect on the date on which the agreement enters into force.
U.S. Tariff Phaseout Schedule for Textiles and Apparel in TPP

- B5
- US6
- US7
- US8
- US9
- US10
- US11
- EIF

Base tariff:
- Year 1
- Year 2
- Year 3
- Year 4
- Year 5
- Year 6
- Year 7
- Year 8
- Year 9
- Year 10
- Year 11
- Year 12
- Year 13
Cơ hội cho Việt Nam trong TPP

- Xuất khẩu tăng thêm 28,4% tính trên mức "cơ sở" vào năm 2025 nếu không có TPP.
  - Không có TPP là 239 tỷ USD trong đó ngành may mặc/giày là 113 tỷ USD
  - Có TPP là 307 tỷ USD trong đó ngành may mặc/giày là 165 tỷ USD

- GDP dự kiến tăng thêm 10,5% vào năm 2025 tính trên mức "cơ sở" nếu không có TPP.

Ng nguồn:

Hiệp định đối tác xuyên Thái Bình Dương và Hội nhập Châu Á Thái Bình Dương: Đánh giá định tính tác giả Petri, Peter và cộng sự

http://www.amchamvietnam.com/30436144/tpp/
Tác động của TPP với Việt Nam

Tại sao thu lợi nhiều như thế?

– Xuất khẩu nhiều hơn từ các nhà sản xuất (34%)*
– Nhập khẩu nhiều hơn hàng hóa tiêu dùng và hàng hóa sản xuất (27%)*
– Nhiều đầu tư trực tiếp nước ngoài vào do nhà đầu tư lạc quan
– Các liên kết mạnh mẽ hơn với các chuỗi cung ứng quốc tế
– Tăng năng suất từ cạnh tranh
– Đả bại cách thức đẩy tăng trưởng và cơ hội
Women Owned Business Supplier Development

Friday, January 15, 2016
Các thách thức...
Kết nối vào các chuỗi cung ứng toàn cầu

- Trở thành nhà cung ứng "đặt chuẩn" cho các công ty Mỹ và toàn cầu
- Tham gia các Hội chợ thương mại ở Hoa Kỳ
- Thông tin doanh nghiệp có mã số D-U-N-S® --- Số Nhận dạng ID duy nhất trên quốc tế
- Giao dịch thông tin điện tử (EDI)
- Thử nghiệm & Chứng nhận
  - Chất lượng & An toàn, Lao động & Môi trường, Tính bền vững, …
- Bảo hiểm trách nhiệm sản phẩm / Bảo hiểm hàng hóa đường biển
- Hậu cần • An toàn • Tuần tra Hải Quan và Biên Giới
- Trang website của công ty
Quality and Safety …
Technical Barriers to Trade … ?

- “Non-Tariff Barriers”
- WTO Technical Barriers to Trade Agreement
- TPP Chapter 8 – Technical Barriers to Trade
  - Technical Regulations
  - Conformity Assessments
  - Transparency
  - Compliance Period
Quality and Safety … Technical Barriers to Trade … ?

- “Non-Tariff Barriers”
- WTO Technical Barriers to Trade Agreement
- TPP Chapter 8 – Technical Barriers to Trade
  - Technical Regulations
  - Conformity Assessments
  - Transparency
  - Compliance Period
- Informed compliance and shared responsibility
Health and Safety ...
Technical Barriers to Trade ...

- "Non-Tariff Barriers"
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- TPP Chapter 8 – Technical Barriers to Trade
  - Technical Regulations
  - Conformity Assessments
  - Transparency
  - Compliance Period
- Informed compliance and shared responsibility
Vietnam Buyers Training 2016

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Vietnam Trade Facilitation Alliance
http://www.cpsc.gov/
Goal of Capacity-Building Plan

As discussed above, Section 305 of FSMA, titled “Building Capacity of Foreign Governments with Respect to Food Safety,” directs FDA to develop a comprehensive plan to expand the technical, scientific, and regulatory food safety capacity of foreign governments and their respective food industries, from which foods are exported to the United States.

Congress identified six elements (listed below) in Section 305 of the Act, and provided that the Plan must include, as appropriate:

1. Recommendations for bilateral and multilateral arrangements and agreements, including provisions to provide for responsibility of exporting countries to ensure the safety of food.


4. Training of foreign governments and food producers on U.S. requirements for safe food.

5. Recommendations on whether and how to harmonize requirements under the Codex Alimentarius (“Codex”).

6. Provisions for the multilateral acceptance of laboratory methods and testing and detection techniques.
What’s Ahead for Trade and TPP

Nate Herman, Senior Vice President, Supply Chain, American Apparel & Footwear Association

Herb Cochran, Executive Director, AmCham Vietnam
TPP’s Labor Provisions and What They Mean for Your Business

Nate Herman, Senior Vice President, Supply Chain, American Apparel & Footwear Association

Avedis Seferian, Esq., President & CEO, Worldwide Responsible Accredited Production (WRAP)
TPP Labor Provisions

International Labor Organization (ILO) core labor standards

- Freedom of association (collective bargaining)
- Forced labor
- Child labor
- Employment discrimination
- Acceptable work conditions
  - Working hours
  - Worker safety
  - Minimum wage
TPP Labor Provisions

Vietnam – Labor Consistency Plan

• Drug rehabilitation centers
• Independent unions
• Union federations
Enforcement

• Fully enforceable under TPP
  • Dispute settlement
  • Just like any other provision in the agreement

• “Stall” provision
  • Stalls duty-reductions on apparel and footwear
  • Only applies to Vietnam
TPP Labor Provisions

• Most progressive labor provisions ever, BUT...
  • They are what your customers now expect as part of doing business today
  • They still did not satisfy Congressional Democrats and other U.S. stakeholders

• New laws
  • CBP and imports made with forced labor
  • California / UK Modern Slavery Law

• Trump is watching
TPP’s Labor Provisions and What They Mean for Your Business

Nate Herman, Senior Vice President, Supply Chain, American Apparel & Footwear Association

Avedis Seferian, Esq., President & CEO, Worldwide Responsible Accredited Production (WRAP)
Refreshment Break
Understanding the Opportunities for Footwear & Travel Goods Under TPP

Nate Herman, Senior Vice President, Supply Chain, American Apparel & Footwear Association
TPP – Footwear Rule of Origin

• Choice of Two Rules – Tariff Shift OR Regional Value Content (RVC):
  1. A change to a good of heading 64.XX from any other chapter, OR
  2. A change to a good of heading 64.XX from any other heading, except from other headings between 64.01-64.05 in Chapter 64, from subheading 6406.10, and assemblies of uppers from subheading 6406.99, provided there is a regional value content of not less than:
     a. 45 per cent under the build-up method;
     b. or 55 per cent under the build-down method

• NO third-country uppers
TPP – Footwear Market Access

• U.S. duty phase outs – Immediate except for 18 items
• Elimination of Japan TRQ (Tariff Rate Quota)
• Every other country also has duty phase outs on sensitive items
18 Items Total (43% of U.S. Imports)

• 4 Years (Linear)
  – 6402.91.80  6403.99.40  6404.19.90

• 6 Years (Linear)
  – 6403.40.30  6403.40.60  6403.91.30

• 11 Years (Step Down)
  – 6402.99.90

• 11 Years (Plateau)
  – 6403.91.60  6403.91.90  6403.99.60  6403.99.90

• 11 Years (Backloaded)
  – 6401.10.00  6401.92.90  6401.99.10  6401.9930  6401.99.60
    6402.91.10  6404.19.20
## TPP – Footwear Duty Phase-Out - Other Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Minimum Before Duty Free</th>
<th>Maximum Before Duty Free</th>
<th># of Baskets</th>
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<tbody>
<tr>
<td>Australia</td>
<td>EIF</td>
<td>4</td>
<td>2</td>
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<tr>
<td>Brunei</td>
<td>EIF</td>
<td>7</td>
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<tr>
<td>Canada</td>
<td>EIF</td>
<td>12</td>
<td>5</td>
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<tr>
<td>Chile</td>
<td>EIF</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Japan*</td>
<td>11</td>
<td>16</td>
<td>2</td>
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<td>Malaysia</td>
<td>EIF</td>
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<td>Mexico</td>
<td>EIF</td>
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<td>EIF</td>
<td>16</td>
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<tr>
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<td>12</td>
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</tr>
<tr>
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<td>EIF</td>
<td>EIF</td>
<td>1</td>
</tr>
</tbody>
</table>

*Japan eliminates Tariff-Rate Quota (TRQ)*
TPP – Travel Goods (HTS 4202) 
Rule of Origin 

• Cut and sew OR tariff shift, depending on the material of the outer surface of the travel good: 
  1. Textile – A change to a good of subheading 4202.XX from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties. 
  2. Non-Textile (leather, plastic) – A change to a good of subheading 4202.XX from any other chapter. 

• ONLY assembly required 

• Inputs / materials can come from anywhere
## TPP – Travel Goods Duty Phase-Out - Other Countries

<table>
<thead>
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<td>Chile</td>
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<tr>
<td>Vietnam</td>
<td>4</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>
Import Opportunities
  • For footwear – It's all about the uppers
  • For travel goods – It’s all about the assembly

Export Opportunities
  • Japan
  • Australia/Canada/Mexico/New Zealand

Sourcing Opportunities
  • Single sourcing platform to serve entire TPP market
Understanding the Opportunities for Footwear & Travel Goods Under TPP

Nate Herman, Senior Vice President, Supply Chain, American Apparel & Footwear Association
Understanding and Applying the Rules of Origin for Apparel

Sally Peng, Member,
Sandler, Travis & Rosenberg, P.A.
Understanding Rules of Origin for Apparel of Various FTAs

AAFA Workshop
Ho Chi Minh City, Vietnam
November 14, 2016
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Sandler, Travis & Rosenberg (STR)

Since 1977, Sandler, Travis & Rosenberg, P.A. (ST&R) has set the standard for providing comprehensive and effective international trade-related legal and consulting services to clients across the globe. Together with its related Global Trade Compliance Management Company STTAS, the firms consist of more than 800 import and export professionals working throughout North America, South America, Europe and Asia (Hong Kong, Shanghai and Guangzhou)

Sally Y. Peng, Esq.
Member & Asia-Pacific Leader
Co-Vice Chair, Amcham HK Apparel and Footwear Committee.
Advisor, HK Chamber of Textile
彭郁竹律师（美国）
ST&R 合伙人及亚太区负责人
香港美国商会服装制委员会副主席
香港纺织商会顾问
Agenda

1. Rules of Origin – TPP (?)
2. Documentation & Recordkeeping for U.S. FTAs
3. Rules of Origin - EU-Vietnam FTA (Concluded)
5. Alternative for Duty Savings
Rules of Thumb for Using FTAs

• Best FTA to use depends on:
  • Specific goods
  • Applicable rule of origin
  • Sources for materials
  • Duty phase out (Market Access)
  • Overall Company's Supply Chains
## Rules of Origin - TPP

<table>
<thead>
<tr>
<th>Textile Product</th>
<th>General Rule</th>
<th>Alternative Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yarn</td>
<td>Fiber forward</td>
<td>Short supply fiber</td>
</tr>
<tr>
<td>Knit Fabric</td>
<td>Fiber forward</td>
<td>Short supply fiber or yarn</td>
</tr>
<tr>
<td>Woven Fabric</td>
<td>Yarn forward</td>
<td>Short supply yarn</td>
</tr>
<tr>
<td>Apparel</td>
<td>Yarn forward</td>
<td>Short supply yarn or fabric</td>
</tr>
<tr>
<td>Household &amp; Other Textile Articles</td>
<td>Yarn forward</td>
<td>Short supply yarn or fabric</td>
</tr>
</tbody>
</table>

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Component that Determines Classification

• Outer shell of garment
• Largest surface area or entire front
• Greatest value
• Yarn Forward Means:
Yarn Forward

• If both components are equal, then the component that determines classification is that which occurs last in numerical order in the tariff schedule.

• Fabric A is knit (chapter 61 knit apparel)

• Fabric B is woven (chapter 62 woven apparel)

• Fabric B is component that determines classification and must meet ROO rule. Fabric A can come from anywhere
### Rules of Origin - Sewing thread

<table>
<thead>
<tr>
<th>No Thread Requirement</th>
<th>HS 5204, 5401</th>
<th>HS 5204, 5401, 5508</th>
<th>HS 5204, 5401, 5502, 5508</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAFTA</td>
<td>Peru</td>
<td>Panama</td>
<td>CAFTA-DR</td>
</tr>
<tr>
<td>Chile</td>
<td>Colombia</td>
<td></td>
<td>TPP</td>
</tr>
<tr>
<td>Singapore</td>
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<tr>
<td>Australia</td>
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<tr>
<td>Morocco</td>
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<tr>
<td>Bahrain</td>
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<td>Oman</td>
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<td>Korea</td>
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<tr>
<td>Israel</td>
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<tr>
<td>Jordan</td>
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<td></td>
</tr>
</tbody>
</table>

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## Rules of Origin - Narrow Elastics

<table>
<thead>
<tr>
<th>No Elastic Requirement</th>
<th>Fabric Forward Elastics</th>
<th>Yarn Forward Elastics</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAFTA</td>
<td>CAFTA-DR</td>
<td>TPP</td>
</tr>
<tr>
<td>Chile</td>
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<tr>
<td>Jordan</td>
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</tr>
</tbody>
</table>

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Direct Shipment Requirement

• Direct Shipment – customs custody in non-TPP Parties

• Permits outside TPP Parties: unloading; reloading; separation from a bulk shipment; storing; labelling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party
## TPP - US Market Access Baskets for Textiles & Apparel

<table>
<thead>
<tr>
<th>US Phase Out Basket</th>
<th>Tariff Elimination Day 1</th>
<th>Intermediate Elimination</th>
<th>Free</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIF</td>
<td>Free</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>B5</td>
<td>20% off</td>
<td>20% off January 1 each year</td>
<td>January 1 year 5</td>
</tr>
<tr>
<td>US6</td>
<td>35% off</td>
<td>NA</td>
<td>January 1 year 11</td>
</tr>
<tr>
<td>US7</td>
<td>35% off</td>
<td>NA</td>
<td>January 1 year 13</td>
</tr>
<tr>
<td>US8</td>
<td>35% off</td>
<td>50% off on January 1 year 6</td>
<td>January 1 year 11</td>
</tr>
<tr>
<td>US9</td>
<td>35% off</td>
<td>50% off on January 1 year 7</td>
<td>January 1 year 13</td>
</tr>
<tr>
<td>US10</td>
<td>50% off</td>
<td>NA</td>
<td>January 1 year 11</td>
</tr>
<tr>
<td>US11</td>
<td>50% off</td>
<td>NA</td>
<td>January 1 year 13</td>
</tr>
</tbody>
</table>
Documentation for TPP

• Self certification
  • Importer, exporter, producer
  • Brunei, Malaysia, Mexico, Peru & Vietnam have 5 year transition period to allow importer certification (TPP)
• Free form

• Post entry claims
  • 1 year
  • Longer if domestic law permits
TPP Certification

- Free-form, self-certification
- Importer’s name, address (plus country), phone, and e-mail;
- Exporter’s name, address (plus country), phone, and e-mail;
- Producer’s name, address (plus country), phone, and e-mail;
- Description of good;
- HS Classification to 6 digits or more;
- Preference Criterion (how good qualifies)
- Blanket period or identification of shipments covered;
- Certifying Statement and number of pages;
- Signatory’s name, address (plus country), phone and email;
- Signature of importer, exporter or producer
- Date
Keys to Document Reviews

• CBP has wide latitude
• English translation
• Production timeline
• Entity list
• Traceable references
  • PO#, fabric style number, garment style number, production order number, cut lot number, contract number, etc.
• Highlight relevant info inside documents

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Best Documents

- Garment FTA Certification
- Garment specification sheet
  - Fabric style number
  - Fabric manufacturer
- Yarn “affidavit”
- Fabric “affidavit”
- Sewing thread, narrow elastic & yarn “affidavits”
- Transactional documents
- Transportation documents
CBP “Affidavit” Requirements

• Signed by party with direct knowledge;
• Identify address of actual production facility;
• Signed by party at location of production facility;
• Full contact information;
• Necessary from producers of required inputs, e.g. yarn, fabric, sewing thread, narrow elastic & yarn;
• Affidavit by converter not sufficient without greige yarn/fabric producer certificate too;
• Adequate description to tie affidavit to goods
Transaction & Transport Documents

• Main fabric & yarn, sewing thread, narrow elastic & yarn:
  • Purchase Order
  • Invoice
  • Proof of payment
  • Transport to destination
  • Include intermediate stops at vendor / converter
  • Receiving reports
Best Documents

• Spinning/ extrusion, knitting/weaving, cutting, sewing, packing
  • Dates & quantities
• Factory profile
  • Equipment list & quantity by type
• Employee attendance records / time cards
  • Number of workers per division
• Direct Shipment of finished goods to importing country
Recordkeeping (US)

• Five years after the date of importation of the good
• All records and documents demonstrating that the good qualifies for preferential tariff treatment
• Paper, film, electronic
• Ability to produce within 30 days
• Recordkeeping penalties $10,000
EU – Vietnam FTA

• Concluded the negotiations on February 1, 2016

• Rules of Origin
  • Fabric Forward
  • Same as EU’s GSP and EU’s FTA with Singapore

• Market Access
  • Within 7 years

• Record Keeping: At least three years
<table>
<thead>
<tr>
<th>HTSEU</th>
<th>Description</th>
<th>Tariff Elimination Category</th>
<th>Tariff Elimination Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>6105.10.00</td>
<td>Men’s &amp; boys’ cotton knit shirts</td>
<td>B5</td>
<td>Removed in six equal annual stages</td>
</tr>
<tr>
<td>6107.12.00</td>
<td>Men’s &amp; boys’ manmade fiber knit underpants &amp; briefs</td>
<td>B3</td>
<td>Removed in four equal annual stages</td>
</tr>
<tr>
<td>6201.92.00</td>
<td>Certain men’s &amp; boys’ cotton woven outerwear</td>
<td>B7</td>
<td>Removed in eight equal annual stages</td>
</tr>
<tr>
<td>6201.93.00</td>
<td>Certain men’s &amp; boys’ manmade fiber woven outerwear</td>
<td>B5</td>
<td>Removed in six equal annual stages</td>
</tr>
<tr>
<td>6203.42</td>
<td>Men’s &amp; boys’ cotton woven trousers</td>
<td>B5</td>
<td>Removed in six equal annual stages</td>
</tr>
<tr>
<td>6205.20.00</td>
<td>Men’s &amp; boys’ cotton woven shirts</td>
<td>B5</td>
<td>Removed in six equal annual stages</td>
</tr>
<tr>
<td>6206.30.00</td>
<td>Women’s &amp; girls’ cotton woven shirts &amp; blouses</td>
<td>B3</td>
<td>Removed in four equal annual stages</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HTSEU</th>
<th>Description</th>
<th>MFN Rate</th>
<th>Yr 1</th>
<th>Yr 2</th>
<th>Yr 3</th>
<th>Yr 4</th>
<th>Yr 5</th>
<th>Yr 6</th>
<th>Yr 7</th>
<th>Yr 8</th>
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</thead>
<tbody>
<tr>
<td>6105.10.00</td>
<td>Men’s &amp; boys’ cotton knit shirts</td>
<td>12.0%</td>
<td>10%</td>
<td>8%</td>
<td>6%</td>
<td>4%</td>
<td>2%</td>
<td>Free</td>
<td>Free</td>
<td>Free</td>
</tr>
<tr>
<td>6107.12.00</td>
<td>Men’s &amp; boys’ manmade fiber knit underpants &amp; briefs</td>
<td>12.0%</td>
<td>9%</td>
<td>6%</td>
<td>3%</td>
<td>Free</td>
<td>Free</td>
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<tr>
<td>6201.92.00</td>
<td>Certain men’s &amp; boys’ cotton woven outerwear</td>
<td>12.0%</td>
<td>10.5%</td>
<td>9%</td>
<td>7.5%</td>
<td>6%</td>
<td>4.5%</td>
<td>3%</td>
<td>1.5%</td>
<td>Free</td>
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<tr>
<td>6201.93.00</td>
<td>Certain men’s &amp; boys’ MMF woven outerwear</td>
<td>12.0%</td>
<td>10%</td>
<td>8%</td>
<td>6%</td>
<td>4%</td>
<td>2%</td>
<td>Free</td>
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<td>Free</td>
</tr>
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<td>4%</td>
<td>2%</td>
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<td>Free</td>
</tr>
<tr>
<td>6206.30.00</td>
<td>Women’s &amp; girls’ cotton woven shirts &amp; blouses</td>
<td>12.0%</td>
<td>9%</td>
<td>6%</td>
<td>3%</td>
<td>Free</td>
<td>Free</td>
<td>Free</td>
<td>Free</td>
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</tbody>
</table>

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Regional Comprehensive Economic Partnership (RCEP)

- ASEAN + Six existing FTAs countries (Australia, China, India, Japan, South Korea and New Zealand)
- 3 billion people; GDP $21.3 trillion; 40 percent of world trade
- Major coverage: trade in goods & services, E-commerce, IP, investment

Rules of Origin (Under Negotiation)

- Similar to ASEAN-China
- RVC: 40% or more; Change-of-tariff-heading approach
- Effective in 3 to 5 years?
- Market Access: Reduce tariffs on over 95% goods to 0 in 10 years
## TPP V.S RCEP

<table>
<thead>
<tr>
<th></th>
<th>TPP</th>
<th>RCEP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Population</strong></td>
<td>819 million</td>
<td>3 billion</td>
</tr>
<tr>
<td><strong>GDP</strong></td>
<td>US$28 trillion</td>
<td>US$21.3 trillion</td>
</tr>
<tr>
<td><strong>World trade</strong></td>
<td>40%</td>
<td>Almost 40%</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td>Relatively more (Extra: environmental protection, labour, financial services)</td>
<td>Relatively less</td>
</tr>
<tr>
<td><strong>Rules of Origin</strong></td>
<td>More restrictive (Yard-forward)</td>
<td>Less restrictive (RVC 40%)</td>
</tr>
<tr>
<td><strong>Market Access</strong></td>
<td>Phasing-out schedule in 10+ years</td>
<td>Reduce to 0% in ten years</td>
</tr>
</tbody>
</table>
Non FTA Duty Saving Program - First Sale to U.S.

If all FTAs failed, what can we do?

• First Sale Rule
Sample Illustration of Basic Structure

NOTE: THE FACTORY WILL FORWARD A COPY OF "INVOICE 1" TO CUSTOMS DEPARTMENT ONLY

U.S Importer

Vendor

Factories

ORDER 1
PAYMENT
INVOICE 2

INVOICE 1
First Sale Value

ORDER 2
PAYMENT

MERCHANDISE SHIPPED DIRECTLY

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FTA & First Sale Case Study

Scenario 1 – Do Nothing (NO FTA, No First Sale)

Babies' sweaters, pullovers, sweatshirts (6111.20.3000)
FOB price: $10 per unit
Annual volume: 100,000 units
Total Value: $1 million
U.S duty rate: 14.90%

Duty Paid
$1 million \times (14.90\% \text{ Duty rate}) = $ 149,000
TPP & First Sale Case Study

Scenario 2 – TPP

Babies' sweaters, pullovers, sweatshirts (6111.20.3000)
FOB price: $10 per unit
Annual volume: 100,000 units
Total Value: $1 million
U.S duty rate: 14.90%
TPP Tariff on this apparel: 50% off from implementation to year 11th

TPP Duty Paid (from implementation to year 11th)
$1 million x [14.9% x (1 - 50%)] = $74,500
TPP & First Sale Case Study

Scenario 3 – Do First Sale

Babies' sweaters, pullovers, sweatshirts (6111.20.3000)
FOB price: $10 per unit
Annual volume: 100,000 units
Total Value: $1 million
U.S duty rate: 14.90%

First Sale Program
First Sale Price: $7.5 per piece
Total Value with First Sale: 7.5 x 100,000 units = $750,000
Duty Paid: $750,000 x 14.90% = $111,750
Scenario 4 – Do TPP + First Sale

Babies' sweaters, pullovers, sweatshirts (6111.20.3000)
FOB price: $10 per unit
Annual volume: 100,000 units
Total Value: $1 million
U.S duty rate: 14.90%

Duty Paid
$7.5 x $100,000 units x 14.90% x (1-50%) = $55,875
## TPP & First Sale Case Study

### Summary of Duty Saving

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Duty Paid</th>
<th>Duty paid Saving Margin comparing with Case 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1 - Do Nothing</td>
<td>$149,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Scenario 2 - TPP</td>
<td>$74,500</td>
<td>50%</td>
</tr>
<tr>
<td>Scenario 3 - First Sale</td>
<td>$111,750</td>
<td>25%</td>
</tr>
<tr>
<td>Scenario 4 - TTP + First Sale</td>
<td>$55,875</td>
<td>62.5%</td>
</tr>
</tbody>
</table>
Question?

**Sally Y. Peng , Esq.**  
Member & Asia-Pacific Leader  
Co-Vice Chair, Amcham HK Apparel and Footwear Com.  
Advisor, HK Chamber of Textile  

彭郁竹律師 (美國)  
ST&R 合伙人及亞太區負責人  
香港美國商會服裝製委員副主席  
香港紡織商會顧問

SANDLER, TRAVIS & ROSENBERG, LIMITED  
Unit 1302  13/Floor  
Dina House - Ruttonjee Centre  
11 Duddell Street Central, Hong Kong  
+852 3979 1902 (Direct) C: +852 9535 6034  
speng@strtrade.com | www.strtrade.com

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Understanding and Applying the Rules of Origin for Apparel

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