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Subject: Joint Canada Apparel Federation (CAF)/American Apparel & Footwear Association (AAFA) Comments in Response to Requests for the U.S./Canada Regulatory Cooperation Council (RCC) (OMB-2013-0004)

To Whom It May Concern:

We are writing to offer the following perspectives in response to the request by the Regulatory Cooperation Council (RCC) for comments on regulatory harmonization between Canada and the United States. Together the American Apparel & Footwear Association (AAFA) and the Canadian Apparel Federation (CAF) represent a large majority of the companies and brands that manufacture and market apparel in the United States and we have a strong commitment to regulatory reform.

Below we outline proposed actions in the areas of textile labeling, and a variety of regulatory issues that impede the free flow of goods between our countries.

A) Labeling

I. Mutual recognition of RN/CA Labels on Textiles/Apparel

Both countries maintain similar but slightly different requirements with respect to the identity of the company responsible for the production and/or sale of textile articles. In the United States, the Textile Fiber Products Identification Act (TFPIA) and Wool Products Labeling Act outline provisions that include the use of a Registered Identification Number (RN) or Wool Products Label number (WPL) issued by the Federal Trade Commission (FTC). In Canada, Industry Canada (Competition Bureau) is responsible for an equivalent CA Identification number system. All numbering systems give consumers the ability to look up information about the company responsible bringing to market a textile article. In both cases the information is now easily retrievable through online databases. In both the United States and Canada, companies may put company name and/or address information on the label and in both countries only firms with a corporate presence in that country may apply for a CA or RN number.

Maintaining two different systems is costly, both to the governments and to the industry. We propose that the systems either be merged into a jointly administered database or, if that proves difficult, that the two countries recognize each other's identification numbering system – in other words, the FTC would recognize CA numbers and Industry Canada would recognize RN or WPL numbers. Such an outcome was envisaged more than 20 years ago when the United States and Canada negotiated the North American Free Trade Agreement (NAFTA), and a commitment to examine reciprocity is contained in Annex 913.5.a-4 of the NAFTA. As the North American market has become more integrated and with the advent of Internet accessibility, such a reform is long overdue.

We recommend that the RCC identify how best to harmonize or ensure mutual recognition of these registration systems.

II. Broader alignment of textile/apparel labeling requirements

Under the same Annex (913.5.a-4) the NAFTA partners agreed that fibre information and other mechanics of labeling should also be the subject of ongoing dialogue. We note that over the last 2 years the Federal Trade Commission (FTC) has reviewed many of these provisions (including recognition of the updated ISO standard on generic fiber names) independently.

We recommend that the RCC encourage Industry Canada to undertake a similar review, and that both agencies (Competition Bureau and FTC) work together with industry to better align regulations and take advantage of the work that has been done independently in each jurisdiction.

III. "Made in" standards.

Both countries apply special considerations to domestically made goods in respect of “Made in Canada” and “Made in the United States” claims. In both countries regulators have sought to restrict unfettered use of domestic origin claims to products that are made within their countries from raw materials which are also sourced domestically. As a result the Federal Trade Commission in December 1997 commented: “that unqualified U.S. origin claims should be substantiated by evidence that the product is all or virtually all made in the United States.” In Canada the Competition Bureau adopted similar measures, outlined in a set of Enforcement Guidelines issued in December 2009.

These measures have been adopted at the same time as globalization has become more fully evident in this industry, with the result being that very few domestically-made apparel articles in either country can use “unfettered” domestic origin claims.

Many firms use a range of domestic and imported yarns and fabrics in goods produced in their respective countries, and imported materials may originate in a number of different countries and change on a regular basis. As a result firms increasingly indicate that goods are “Made in [Canada or the USA] from imported materials.” This is allowed in the United States, however in Canada under Section 11.(1) (c) of the *Textile Labelling and Advertising Regulations* states that the origin of the fabric must be disclosed:

Every representation label that is required to meet the requirements for a disclosure label shall show (c) where there is a representation that the article or any fabric or fibre therein is imported, ***the name of the country of origin****, unless the representation is made in another label applied to the article and the name of the country of origin is shown in that other label.*

We recommend that the RCC be tasked to review the respective regulations in Canada and the USA, and make recommendations concerning how to reference imported materials used in such apparel on disclosure labels. We believe that indicating the presence of imported materials should be sufficient, and that the country of origin of the imported materials is not needed.

IV. Common approach to labeling of Upholstered and stuffed articles

In both countries there are labeling requirements for upholstered furniture and bedding to ensure the cleanliness and safety of stuffed articles. In both countries these standards were introduced at the state/provincial level decades before broader product safety legislation was adopted. In all cases the regulations require that the factory producing the stuffed articles be registered in the jurisdictions in which they are sold, and that an annual registration fee be paid. In the United States at least 14 states have regulations concerning upholstered furniture, bedding and similar products. In Canada three provinces (Ontario, Manitoba and Quebec) maintain broadly similar regulations with one major exception, in these provinces the regulations apply to apparel containing stuffing or padding. In fact, the three Canadian

provinces are the only jurisdictions in the world that apply these labeling and registration requirements to apparel (with certain limited exemptions).

In the United States the state authorities cooperate on common labeling requirements, and registration. In Canada similar cooperation and coordination is mandated in section 8 of the Agreement on Internal Trade, and as a result it constitutes a *de-facto* national program.

To our knowledge there is no reasonable basis for these regulations to be in force for apparel. In addition to other considerations both Canada and the United States have adopted enhanced product safety regimes which allow federal regulators to protect the safety of consumers, without these specific regulations. Given that only three provinces have such requirements for apparel many companies outside those jurisdictions (and indeed within them) question the need for such regulations. Our members also encounter substantial differences in interpretation among the provinces despite the fact that these are similar regulations.

We propose that the RCC consider:

- Aligning the scope of the regulations by exempting apparel (in the relevant Canadian jurisdictions) and restricting the application of these regulations to upholstered furniture and bedding where product coverage is based on an established consensus among regulators.
- Directing US and Canadian authorities to harmonize labeling (including format, definitions, mandatory requirements, and terminology) and registration for the Uniform Label/Upholstered and Stuffed Article regulations, allowing a single label to be used in both Canada and the United States, for the products that would remain subject to these regulations.

B. Product Safety

I. Mutual recognition of flammability requirements

Both the United States and Canada maintain a constellation of requirements to ensure safety standards with respect to the flammability of general wearing apparel and in particular children's sleepwear. While it is undeniable that these standards have a common goal, they rely upon different test methods developed independently in the two countries. This situation gives rise to a situation where a garment is sent to a single lab but subjected to two different test methods - one for Canada and one for the United States. Requirements and exemptions differ as well. Harmonizing or providing mutual recognition of these test methods and regulatory provisions would result in an immediate halving of testing costs.

We recommend that the RCC identify how best to harmonize or ensure mutual recognition of these requirements. We also recommend that the product safety agencies in each country come to a shared understanding of the risks and scope of regulations that the standards are addressing so a single set of standards can be a long term goal.

II. Common definition of child care for phthalates.

Both countries contain bans on certain phthalates used in child care articles. In both cases, the definition of child care article is similar - articles for children three years of age and under that facilitate feeding, sucking, or sleeping. Canada also includes items that facilitate relaxation and hygiene. Both definitions are based on a European Union requirement that specifically exempts pajamas to clarify that such articles don't facilitate sleeping in a manner that involves behavior associated with phthalate risks (such as prolonged sucking on a pacifier to fall asleep). Canada's definition incorporates the sleepwear exemption while the U.S. definition does not. Inasmuch as there is no data to support inclusion of sleepwear in this definition, especially since the feature on pajamas that has been sometimes cited as the feature that prompts concerns - the padded feet on the bottom of PJs for older toddlers - is actually used to facilitate not sleeping.

We urge that the RCC recommend a common standard that reflects actual risk associated with phthalate absorption in pajamas, and that sleepwear not be viewed as a child care article.

III. Different lead standards and the definition of children.

In the United States, under the Consumer Product Safety Improvement Act (CPSIA), lead is banned in substrates in children's products in amounts equal to or greater than 100 parts per million. Children are defined as aged 12 and under. Under regulations currently being developed by Health Canada children are defined as being under 14 years of age, and the allowable lead content is slightly lower than prevailing US standards. As a further illustration, the Canadian children's jewelry lead requirement is less stringent than the U.S. requirement and defines children as under 15 years of age. Canada also has a 90 ppm lead requirement for adult and children's mouthable articles, which includes bibs, whereas the US only regulates lead in children's articles at 90 ppm for coatings and a less stringent substrate requirement of 100 ppm.

We are concerned about different age specific definitions of “child”. The apparel industry operates with sizes rather than age determinations; there is no hard and fast rule regarding what constitutes a garment for any specific age of consumer. In both the US and Canada there is no precise correlation between size and age of wearer. At the same time one could argue that there are significant lifestyle and fashion changes that occur between the age of 12 and 13, making a single year’s difference potentially quite significant. As a result there is a substantial difference between the two countries’ approaches.

In the U.S. the Consumer Product Safety Commission (CPSC) has guidelines concerning how to establish whether a product is intended for the use of children. We do not necessarily endorse the CPSC framework except to say that there should be a single age threshold and a single framework for determining whether a given article is primarily intended for use by children – and this should apply throughout North America.

If different age threshold are adopted and/or maintained, such diverse approaches would result in chaos as products compliant in one jurisdiction would be deemed non-compliant in the other.

We strongly urge the RCC to recommend that these two different standards be reconciled so that industry has a single compliance target, and that reconciliation be based on the standard that can best mitigate actual risks associated with the introduction of lead into the bloodstreams of children. We further urge that any test methods prescribed for these standards be similarly harmonized.

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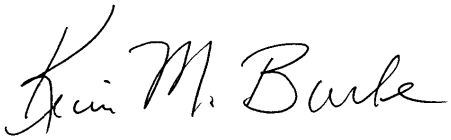
As a general note, we believe our sector is ripe for regulatory alignment. While we highlight a number of diverse issues, each concern impairs our industry's competitiveness and adds additional costs to consumers. When taken together, they result in a substantial burden to our economies.

Thank you again for providing us this opportunity to submit joint comments. We believe there will be further opportunities to provide input, and we look forward to working with the RCC to bring about regulatory harmonization to support a competitive North American fashion industry.

Sincerely,

Bob Kirke
Executive Director
Canadian Apparel Federation (CAF)



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