July 31, 2017
Submitted electronically

PUBLIC VERSION

The Honorable Wilbur Ross
Secretary of Commerce
Chairman of the Foreign Trade Zone Board
1401 Constitution Ave, NW
Washington, DC 20230

Re: Case No: B-53-2015

Dear Secretary Ross:

Coleman submits new evidence and accompanying comments in regard to the Foreign Trade Zone (FTZ) Board staff preliminary recommendation, pursuant to the request for comments in Federal Register Notice Vol.82, No. 112, Doc. 2017-12188 (June 13, 2017).

The new evidence (contained in Business Proprietary Appendix A) directly contradicts the FTZ staff's preliminary findings and refutes the "key supporting elements" underpinning the staff's recommendation. Specifically, this information pertains to a major lost sale that occurred in late 2016 (after the close of the record), which resulted in a loss of nearly 10% of the Coleman's domestic production of recreational Personal Flotation Devices (PFDs) based on 2016 figures. Coleman also submits new evidence to correct market share information that Coleman inadvertently misstated in its application, which the staff appears to have relied upon.

Coleman is addressing this Submission directly to the Board because new evidence throws into stark relief the reliance of the staff recommendation on evidence never properly entered into the record and the legally flawed analysis conducted in regard to such "evidence." It is unclear where the non-record evidence the staff referenced came from. It may have been submitted *ex parte* by opponents of Coleman's application or it may have been generated by independent research conducted by the staff. Either way, it was cited by the staff in an inaccurate and misleading manner.

Indeed, even in regard to evidence properly entered in the record, the staff recommendation consistently misconstrues and misstates such evidence and draws flawed conclusions therefrom. The staff applied standards in evaluating the evidence arising from Coleman's application that are inconsistent with the Board's regulations. Coleman hopes that the staff will revisit its recommendation in light of the new evidence and accompanying comments included in this Submission; however, considering the systemic implications of the staff's recommendation, this ultimately is a matter for the Board to address directly.

Additionally, the FTZ staff has stated that it has relied on the recommendation and technical expertise of another Office within the Commerce Department, the Office of Textile and Apparel (OTEXA). Unfortunately, in its January 18, 2017 memorandum, OTEXA openly applied incorrect legal standards in justifying its recommendation. These standards appear to have been derived from the commercial availability (also known as "short supply") determinations that the Committee of Implementation of Textile Agreements (CITA) applies to evaluating requests for third country manufacturing under Free-Trade Agreements (FTAs). OTEXA supports CITA and, apparently, applies the CITA processes and "standards" to FTZ applications involving textiles. These short supply considerations are not consistent with the Board's regulations, which we elaborate on below (see reference to footnote 6).

Because of the key and misleading nature of the OTEXA memorandum, Coleman will address that first and then discuss the remaining inaccuracies and incorrect legal standards utilized by the FTZ staff. Coleman urges the Board to reject the OTEXA memorandum and the FTZ staff preliminary recommendation which relies upon it.

Finally, while Coleman strongly believes that the facts, as applied under the correct regulatory standards, fully justify an unrestricted grant of manufacturing authority, Coleman will suggest a compromise proposal to facilitate a decision that enables Coleman's U.S. manufacturing operations. This would allow Coleman to compete on a more equal basis with imports of PFDs, resulting in an expansion of U.S. manufacturing that will lead to economic development in the Sauk Rapids region, while simultaneously protecting the interests and ability of the domestic textile industry to participate in the industry in the future.

The OTEXA memorandum

OTEXA's recommendation is based on incorrect and misconstrued information to which OTEXA applies incorrect legal standards.

The OTEXA memorandum of January 18, 2017 purports that it is based on "information in the record." This is a material misstatement - key information relied upon by OTEXA was not in the record at all. It then prominently cites the supposed fact that "At least one of the U.S. producers, Highland Industries, Inc., has stated that it currently sells several of the specified fabrics to Coleman's competitors in the U.S. and abroad." This also is simply untrue – Highland Industries does not supply the specified fabrics at issue, despite Coleman's past attempts to facilitate such a supply.

Not only did Highland say nothing at all about the "subject fabrics," primarily nylon and polyester, but it's representative spoke exclusively about a totally different fabric that is NOT the subject of Coleman's application. Highland's representative, Mr. Fields, repeatedly stated at the hearing that Highland had been in the air-holding fabric business since an acquisition in 1998 and sold to many customers in the United States. He said that Highland previously had sold air-holding fabric to Coleman and that it wished to again.[1]

Later, Jeff Schmitt of Coleman held out a sample of air-holding fabric and specifically noted that this was an entirely different type of fabric (classified under HTS 5903.90) used for inflatable PFDs and was not the subject of the application. In fact, Coleman purchases air-holding fabric from domestic competitors of Highland.[2] Mr. Fields seemed to concur and then explicitly confirmed the point in his closing remarks.[3]

Furthermore, in his opening statement at the Hearing, Mr. Fields described himself as the Senior Product Manager for "our rubber, mechanical rubber and tire industry, and our air-holding and urethane product line."[4] In other words, Mr. Fields seems to have no responsibility for, or knowledge of, the nylon and polyester fabrics at issue. His testimony was clear and repeated; Highland's interest is in a wholly different fabric that is irrelevant to Coleman's application.

[1] These references to air-holding fabric can be found repeatedly in pages 58-60 of the Hearing transcript.
[2] Hearing transcript at p. 95. See also Coleman Rebuttal Submission at p. 20.
[3] Hearing transcript at p. 108.
[4] Hearing transcript at p. 57.

Second, the fact that companies have sold other fabrics that have UL certification does not as a simple matter of fact and law, support a statement that they are consequentially also qualified suppliers of the required fabric. Milliken made the flawed argument at the Hearing that Coleman should have given them a contract (despite the fact that their price was significantly uncompetitive) and then they would have produced fabric that they might be able to obtain UL certification for in the future.[5] This argument is detached from manufacturing reality. A prospective supplier needs to offer qualified items, especially when the technical requirements are rules set by the U.S. Coast Guard for life safety.

If Milliken could not present a technically qualified product to Coleman, then there is no evidence whatsoever on the record that they can physically supply the product. OTEXA claims that the required fabrics are relatively basic and that manufacturing to Coast Guard-required standards is not a problem. To date, however, no qualified alternatives exist, nor has there been any effort to achieve requisite qualification. The complaining manufactures are either unwilling or uninterested in doing so. Either conclusion makes evident that OTEXA's heavy dependence on such alternatives in its opposition to Coleman's application is misleading and has skewed the analysis and the FTZ Staff's opinion of impact thereof.

Following these factually incorrect and legally irrelevant statements, the OTEXA memorandum attempts to argue that "Coleman presented no information to indicate that either Highland or Milliken is incapable of supplying the necessary fabrics, or that they have insufficient capacity to produce the quantities that Coleman requires." The suggested obligation to prove alternative supply is unavailable or deficient is not required by the FTZ Board's regulations. That approach is carried over from OTEXA's work on so-called commercial availability or short supply determinations from Free-Trade Agreements, and has no basis in the FTZ Board's analysis. The fact remains, that the objecting mill did not attempt to sell the fabrics in question prior to Coleman's application for FTZ manufacturing authority, and has not made an effort to do so in the intervening time.

Under FTAs, the CITA, which is staffed by OTEXA, makes short supply determinations in regard to third country manufacturing of apparel and other textile-containing products. CITA/OTEXA

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[5] Hearing transcript at p. 112.

requires a due diligence process whereby such third country manufacturers must prove the negative, *i.e.*, a lack of capability or capacity in the United States or, sometimes, in the FTA partner countries. This due diligence process is imposed on the basis of CITA "Procedures,"[6] and is not required in the notice and comment regulations such as the Board's.

The Board's regulations have no due diligence requirement. Coleman further notes that the Board's regulations were reissued in 2012 pursuant to the requirements of the Administrative Procedures Act (APA). The Board could have chosen to introduce due diligence requirements in its draft regulations published for comment, but it did not. The Board also chose not to impose special rules for any industries, such as apparel or other textile-consuming industries. An attempt to impose such due diligence standards is contrary to law and insupportable.

Following its statement of a legal standard contrary to the Board's regulations, the OTEXA memorandum then states that OTEXA "has a long-standing policy to oppose an FTZ application for proposed activity if that activity is motivated by relative prices of domestically produced textiles or textile products versus imported alternatives."

There are two glaring improprieties in this OTEXA statement. First, OTEXA effectively states that it will not take "relative prices" into consideration. This is inconsistent with the regulations. Section 400.27 states: "The Board's evaluation shall take into account such factors as market conditions, price sensitivity . . ." There is no limitation on the manner in which prices are to be considered. There is no carve-out for apparel and other textile consuming products. OTEXA does not have the authority to simply declare that it will disregard a required element of the regulations. The OTEXA memorandum is incorrect as a matter of law.

Second, OTEXA admits that it adopts this blanket no-price policy position in all cases involving apparel and other textile-consuming products. That is, OTEXA admits that it is rejecting the case-by-case factual analysis required by the Board's regulations and thereby implicitly acknowledges

[6] In some case, CITA/OTEXA has never issued final "Procedures." For instance, the U.S.-Peru FTA which entered into force in 2009 has only "interim" procedures. Interim Procedures are also all that were issued in implementation of the Korea-U.S. FTA which entered into force in 2011. Some FTAs, such as the U.S.-Morocco FTA never had any short supply Procedures issued. CITA operates under the President's foreign policy authority under the Agricultural Act of 1956. Accordingly, CITA's Procedures are not APA-consistent.

that it has not conducted such a review of Coleman's application. This admission by OTEXA renders the OTEXA memorandum legally irrelevant.

OTEXA further suggests that there is extensive domestic production of PFDs and then tries to draw an inference that approval of Coleman's application will lead to more general use of FTZs. This is an unsupported statement. The only competitors identified in the record are those mentioned in Coleman's application.[7] It is unknown whether they are producing recreational PFDs and, if so, what their manufacturing situation is.

Moreover, the inference OTEXA draws from this unsupported fact" is illogical. OTEXA seems to argue that approval of the Coleman application will somehow hinder the ability of the FTZ Board to reject other applications when the facts support any opposition voiced by the textile industry. OTEXA offers no explanation for their position that the Board cannot properly apply the facts of each unique situation on a case-by-case basis, as the regulations require.

The Board's regulations specifically require a case-by-case determination based on the facts of each case. The OTEXA recommendation is directly contrary to the law and regulations in its demand that the Board violate its own regulations and make blanket rulings on apparel and other textile-containing products regardless of the specific facts. Coleman is confident that the Board can conduct investigations in accordance with its regulation if it so chooses.

Finally, OTEXA argues that "Approving Coleman's request would establish an additional precedent for companies using textile materials for end uses other than PFD production." Here the Board is obligated to apply its regulations on a case-by-case basis to the facts at hand. In contrast, OTEXA seems to be arguing that there should be special rules for the apparel and other textile consuming industries. That is not true; there are no special rules and the textile industry does not have a veto over U.S. government actions taken pursuant to duly implemented regulations. A decision in favor of Coleman will not open a Pandora's Box as the opponents from the textile industry assert; a view OTEXA seems to accept in the January 18 memorandum. Each case must be weighed on its own merits by the FTZ board. Approval of the Coleman application will in no

[7] Coleman also incorrectly stated in its application that imports represented 14-15% of the market. As discussed below, this appears to be an inversion of the actual statistics, such that imports most likely account for 85% of the market.

way hinder the ability of the FTZ board to reject other applications when the facts support opposition from the textile industry.

These fundamental errors of law and fact in the OTEXA memorandum -- particularly in light of the new evidence submitted here -- render it unsound as a basis for the Board's decision regarding Coleman's application.

The FTZ Staff's Recommendation

The FTZ staff's preliminary recommendation relies heavily upon the input, support and recommendations of the OTEXA staff. The FTZ staff recommendation explicitly states that OTEXA "provided assistance to the FTZ staff." The FTZ staff explains that its main findings include the recommendations provided in the OTEXA memorandum of opposition.

As demonstrated above, the OTEXA memorandum is based on standards inconsistent with the Board's regulations and misstates and misconstrues key facts. As such, the FTZ staff's close reliance on the OTEXA memorandum and staff input is unsound and compromises the legal integrity and factual bases for the staff recommendations.

Additionally, both the OTEXA and FTZ staff recommendations are based on misconstrued evidence on the record as well as new information that was not contained in the record. These errors are highlighted by the new evidence submitted as part of these comments. For all of these reasons, as further elaborated below, the Board should not accept the staff's preliminary recommendation.

Evidence in the record

The FTZ staff recommendation states that the staff examiner "assessed the evidence and arguments on the record." However, on the face of it, the staff recommendation did not take into account a great deal of evidence that was submitted on the record by Coleman, Pregis, Outdoor Industries Association and others supporting the application.

In contrast, the staff recommendation appears to be based on a great deal of purported "evidence" that was not actually on the record. It is unclear where this information came from or how it was obtained.

Coleman has reviewed the testimony at the Hearing and the submissions from opponents and can find no record of the matters in the citations in footnotes 2 and 5-11 of the staff recommendation. There does not appear to be any record of these pieces of information having been submitted or otherwise being properly entered into the record for comment. While we do not know how this information was obtained, one would speculate that either the FTZ and/or OTEXA staff accepted information submitted *ex parte* from opponents of Coleman's application in the domestic textile industry, or the FTZ and/or OTEXA staff engaged in additional research without the required public notification.[8]

Coleman has also searched the transcripts and submissions of opponents for any evidence regarding domestic manufacturing and input sourcing for Mustang and Kent (including Kent's other brands such as Onyx and Full Throttle) that are mentioned in footnote 11. Coleman can find no references to these companies other than what Coleman itself stated when it identified other PFD companies in its application.[9] Although it is probable that *some* manufacturing of recreational PFDs occurs in the United States, there is no evidence properly on the record regarding which companies are actually doing so, what exactly they are producing, where they are producing, or if any use the U.S. nylon or polyester fabrics that are the subject of Coleman's application and if not, how such companies are sourcing the fabrics used in the final product.

Footnote 11 of the staff recommendation, which apparently is the key "evidence" about domestic competition, seems to be related to a citation to testimony by the Highland representative, Mr. Fields.[10] As noted above, no evidence was presented at the Hearing that Mr. Fields has relevant experience with any fabrics that Coleman has included in its application. Instead, his testimony was exclusively about a fabric, *i.e.*, air-holding fabric (HTS 5903.90), which is NOT included in Coleman's application. While Mr. Fields unfortunately confuses the matter in Highland's post-Hearing submission, a close reading of that submission also does not actually state that Highland is making such nylon and polyester fabrics or that it is selling or ever has sold those fabrics to Coleman or any Coleman competitor.

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[8] Following the closing of the record, Coleman and its representatives met with FTZ staff. These contacts were about timing and other process-related matters. FTZ staff was quite clear that they would not discuss matters outside of the record with Coleman.
[9] See Coleman Application, Response to Question 17, pp. 15-16, at Response to Question 27 at p. 20.
[10] The staff recommendation cites page 17 of the Hearing transcript which does not involve Mr. Fields.

As noted above, in response to the invitation for comment and new evidence in the Federal Register notice, Coleman is attaching as Appendix A information regarding an actual lost sale to imports after the closing of the record. This lost sale represented almost 10% of Coleman's 2016 sales of recreational PFDs made in Sauk Rapids. This new evidence directly undercuts the staff's conclusions drawn from the "evidence" cited in the staff's recommendation.

Staff Findings

The staff recommendation provides three Findings and then lists several "key supporting elements." However, there is no link provided between which key supporting elements are associated with which Finding. Accordingly, Coleman will address them all separately. As a general matter, none of the Findings or key supporting elements are grounded in the language of the regulations.

The first staff Finding is:

> FTZ benefits do not appear to be a determinative consideration in Coleman's global investment decision for PFD production

There is no requirement anywhere in the regulations that FTZ benefits be determinative of investment decisions. Indeed, a literal reading of this means that Coleman is *precluded* from applying simply because it made initial successful reshoring investments. There certainly is no requirement that an application cannot be made prior to an investment. Such a requirement would be counterproductive as it would inhibit investment in U.S. manufacturing.

As Coleman exhaustively testified, it has pursued a strategy of reshoring production where it can. It did this with PFDs. Having begun the process, it became clear that there were limits to how successful its expansion plans could be in the face of a tariff inversion that actually incentivizes offshore sourcing.

The question is whether FTZ benefits will help sustain and expand U.S. economic activity, not whether it is determinative of investment decisions. Coleman's major lost sale described in Appendix A illustrates the point. To the best of Coleman's knowledge, it lost this sale to direct imports from China. Coleman does not know the exact price offered by the Chinese manufacturers, but Coleman does know the prices it pays for PFDs from its Asian sources as well as the cost of production at Sauk Rapids with the tariff inversion. If Coleman is to win back this particular

contract, under present circumstances without the FTZ, it will likely be based on importing the PFDs instead of manufacturing them in the Sauk Rapids facility.

For 2017, Coleman was able to increase some other production of PFDs to stem the increase of allocated overhead, but this episode demonstrates a flaw in the staff's reasoning. Instead of the increased U.S. production that might have resulted from, among other things, relief from the tariff inversion, Coleman had nothing better than static production. The goal of the Board should be to support expansion of U.S. manufacturing, not to deny FTZ benefits and be satisfied with stasis.

The second staff Finding is:

> The potential negative effects with respect to domestic textile producers including highland Industries, Inc., and Milliken & Co.

This Finding is simply not supported by the facts. No domestic textile company currently supplies these products to Coleman. Approval of production authority will have no negative impact on them. The primary argument from them seems to be that they should be gifted a contract for purchase of these fabrics by Coleman regardless of their lack of competitiveness. Otherwise, according to the domestic textile industry, everyone should lose.

Coleman has given them every opportunity. They have been unable to supply technically qualified product at a remotely competitive price. Furthermore, not a single domestic textile company has even submitted a bid for polyester.

Highland seems to only make air-holding fabric, which perhaps explains why their response to a 2014 RFQ was a massive 450% above the landed, duty-paid price of imported nylon and polyester. Highland is welcome at any time to make a qualified offer to supply air-holding fabric to Coleman. But, such fabric is completely outside the scope of Coleman's application[11] and any such offer is irrelevant to the Board's evaluation here.

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[11] Mr. Field's letter of March 11, 2016, also seemed to include an attempt to quantify lost jobs in the case of some unidentified company shifting some unknown amount of purchases to off shore sources through some speculative future FTZ application. There is no actual evidence on the record and Mr. Fields undermined his own testimony at the Hearing by offering only statements about the wrong fabric, i.e, an air-holding fabric classified under HTS 5903.90 which is NOT included in Coleman's application. Accordingly, the Highland letter can only be considered relevant to air-holding fabric and irrelevant to Coleman's application. Coleman sources air-holding fabric from two U.S. companies and understands that one of those companies' source at least part of its supply from Israel under the terms of the U.S.-Israel FTA. If Mr. Fields is trying to argue that some other FTZ might substitute otherwise

Milliken did not make an offer to supply Coleman in 2014, but did eventually make a bid in 2015 after Coleman issued another RFQ. However, even after a request for a best and final offer (which request even gave Milliken a target greater than the imported price), Milliken's offer was for over 100% of the landed, duty paid cost of imported fabric. It also must be recalled that this bid by Milliken was for technically non-conforming fabric, *i.e.*, not UL-approved. Obviously, with a 14.9% duty on the imported fabric, an offer to supply non-conforming fabric at double the market price was a non-starter. Coleman cannot buy what it cannot sell.

Coleman also would like to emphasize that all contacts with the domestic textile manufacturers have been initiated by Coleman. Even after the Hearing where they claimed they were interested in selling to Coleman, not a single word has been heard from them. There is no indication that they have made any effort to obtain the necessary UL certification. There does not seem to be any actual commercial interest on their part in supplying Coleman.

In its third Finding the staff stated:

> No demonstrated causal link between proposed FTZ cost-savings and a net positive (national) economic effect and significant public benefits.

There is no basis in the regulations for this Finding. It is unclear what the staff means by a "demonstrated causal link." Coleman is not aware of other applicants in other industries having to make some sort of mathematically provable causal link.

The elimination of the tariff inversion would allow Coleman to press ahead with expansion. Instead, as the evidence of the major lost sale demonstrates, static production is the best that can be hoped for. Removal of the tariff inversion will assist Coleman in regaining this business from its Chinese competition and restoring it as part of the Sauk Rapids product lineup. However, because the customer did not tell Coleman precisely what the competing offer was, it is impossible for Coleman to mathematically prove that removal of the tariff inversion would restore the business. It is rare for companies to be given such detailed information about lost sales from their customers. While Coleman has provided more than sufficient evidence of the domestic benefits which the tariff inversion would help it realize, the staff is making an impossible evidentiary

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dutiable imports for air-holding fabric actually being sold by Highland, it is possible that Highland might have a viable argument that such a future application violates the third threshold test in Section 400.27(a). In any event, those are hypothetical fact situations have no legal relevance to Coleman's application.

demand of Coleman that it does not require of applications not involving apparel and other textile containing products.

FTZ cost savings will support stabilization and further expansion of Sauk Rapids production. It manifestly would aid Coleman's domestic suppliers who account for over 60% of the inputs for Coleman's PFDs. There will be no lost business on the part of the domestic textile producers. In fact, if they really are interested in participating in sales to the PFD industry, their only hope is approval of the production authority under the terms of the compromise proposal suggested by Coleman at the end of this Submission.

Coleman fails to see why improved investment, production and employment in Minnesota, Kansas, Mississippi, Indiana and other states is not a positive national economic effect. There will not be a single lost job in the fabric mills of the domestic textile producers, so there is no downside. These factors clearly are of significant public benefit to any objective observer.

The Staff's "Key Supporting Elements"

As mentioned above, there is no direct link provided by the staff between the findings and the professed key supporting factors. Therefore, Coleman will address these factors independently.

The first identified key supporting factor is that "there is domestic supply available;" this factor obviously is carried over from the OTEXA memorandum. Also, as discussed above, it is legally irrelevant to FTZ applications, even if it might be a factor in approving preferential tariff treatment for third country production under FTAs.

Coleman must also draw the Board's attention again to the fact that <u>no domestic textile company has ever submitted a bid to Coleman for polyester fabric</u>. Regarding other textile products, Coleman has on its own found a domestic source for webbing and, therefore, excludes it from the proposal at the end of this Submission.

After a request for a best and final offer, nylon fabric was only offered for a price over 100% higher than the landed, duty-paid price of imported nylon. None of these facts of no-bids and high bids have been mentioned in the staff's recommendations. Accordingly, the staff failed to examine the factor of "price sensitivity" which actually is a required element of consideration under the regulations. As the record reflects, there is no domestic supply available of the fabrics.

The second identified key supporting element referred to by the staff is that approval would reduce the cost of imported textile materials. Yes, certainly, that is the case here and will be the case in any situation where there is an inverted tariff. However, that has never been considered disqualifying. The Board's regulations specifically permit approval of FTZ applications in the case of inverted tariffs unless the third threshold of Section 400.27(a) is violated. The staff agreed that Coleman met the threshold tests, but then seems to impose a test here that makes the mere presence of inverted tariffs a prohibiting factor.

The staff also argues that foreign competitors already have advantages due to other factors such as lower labor costs. There is simply no reference whatsoever in the regulations to such supposed considerations. The staff cannot retroactively and arbitrarily impose such a test which, in any event, would be impossible to meet.

The only supposed "other advantage" the staff referred to was "lower labor costs." There is no reference whatsoever in the regulations to lower labor costs. Moreover, Coleman further notes that it may be that certain foreign producers have lower hourly wage costs,[12] but so do foreign PFD producers. If this is to be a new factor, it must be applied to all applicants and it must be applied evenly between the applicant company and putative domestic suppliers. It is applied here in an unexplained, unfair and arbitrary manner.

The third key supporting factor in the staff recommendation is that Coleman has made significant investment in domestic PFD production. The staff then recites a series of statements about the success of Coleman's reshoring efforts. However, Coleman fails to see how its re-shoring efforts can be properly viewed as a *negative* consideration, much less a disqualifying one. Reshoring initiatives should be a positive consideration. It is illogical for the staff to argue that Coleman should be penalized because it successfully started its re-shoring efforts and only later applied for FTZ manufacturing authority as it became clear that the tariff inversion was hampering the effort.

There is nothing whatsoever in the regulations that implies, much less states, that a U.S. manufacturer is precluded from applying for an FTZ if FTZ benefits will help stabilize and

[12] Labor costs and hourly wages are can mean very different things. If the staff actually meant net labor costs, that would require a review of productivity, the cost and use of capital equipment, energy usage and costs, transportation costs, etc. The concept of net labor cost is based on labor productivity, of which hourly wages is merely one factor. There is no evidence in the record at all about the net cost of labor or, indeed, the hourly wages for either fabric or PFDs made in various countries.

promote further expansion of its existing U.S. factories. This staff position is completely counter to successive Administrations' efforts to support and increase U.S. manufacturing. The Board must reject this supposed "key supporting element" of the staff's recommendation.

In the final key supporting element (that has several sub-elements), the staff states that Coleman has argued that approval of the FTZ application is the "sole reason" for future investment or expansion. Coleman does consider that relief from the tariff inversion can substantially aid its expansion plans and that, on the other hand, lack of relief can lead to destabilization of the Sauk Rapids facility. The lost sale of a major product line to Chinese imports, sadly, illustrates the importance of these stakes.

However, Coleman has reviewed the passage cited by the staff from the Hearing transcript and it simply does not say what the staff alleges.[13] There is no statement that FTZ benefits are the "sole reason for future investment and production." Coleman was speaking about the importance and potential beneficial impact of relief from the tariff inversion because that is the issue before the Board. It would have been strange indeed for Coleman to spend its time at the Hearing talking about interest rates, Federal Reserve policy, tax policy or any other such factors. The issue is the possible beneficial impact of relief the tariff inversion and that was the topic discussed.

Having set up this "sole reason" standard, the staff then went on to try to knock it down by describing a "whole range of other considerations" that Coleman allegedly has not addressed. Not a single one of these "other considerations" is grounded in the regulations.

The first two "sub-elements" the staff newly identifies recount the interest of Jarden Corporation (Coleman's parent company) in re-shoring because of changes in relative wages and other such factors.[14] The staff also cited Coleman's successful efforts to increase efficiency and flexibility in its manufacturing processes.

The staff's idea seems to be that, if there are some advantages in manufacturing in the United States, then the mere existence of those positive factors should disqualify an applicant from FTZ benefits. There is nothing in the regulations that supports such a claim by the staff. Moreover,

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[13] The staff cites pages 10-11 of the Hearing transcript.
[14] Coleman notes the irony that the staff cites here the rising wages in China, while having previously claimed that lower wages in Asia were a factor counting against approval of the application. It seems that the staff has, again, created no-win criteria that has applied to Coleman's application.

Coleman also is not aware that this new test has been applied generally to all applicants and all industries. The staff seems to be arguing that FTZ benefits must, in fact, be the "sole reason" for re-shoring in order to have the application approved. In other words, the staff suggests that if an applicant has shown a desire to re-shore manufacturing and has taken the initiative to increase efficiency and flexibility, then those are *disqualifying* factors.

Thus, the criticism in the main key element bullet seemingly is not that Coleman incorrectly argued that FTZ benefits are the sole reason, but that Coleman was unsuccessful in establishing that FTZ benefits *actually are* the sole reason. What the staff has done is written a new test wholly outside the regulations and then criticized Coleman for not meeting the requirements of this test. This is not appropriate and the Board should reject this ersatz regulation drafting that would impose arbitrary and previously unknown tests on applicants. No applicant can meet such a new "sole reason" test. Acceptance of the staff's recommendation would not only unfairly damage Coleman, but it would, once generalized, effectively shut down the FTZ process. It is an impossible standard.

Furthermore, it is illogical to deny Coleman's application because Coleman did not demonstrate to the Board that it is actually an **in**efficient and **in**competent manufacturer and that it had no previous interest in re-shoring manufacturing. Imposition of new unfounded legal factors not supported by the regulations for consideration as the staff has done here is a dangerous game. It leads to illogical conclusions, surprise demands of applicants, irrational focus on extraneous "evidence" and generally undermines the rule of law in the application process for FTZs.

The next two sub-elements cited by the staff also go to this new "sole reason" standard and should be rejected both because they are inconsistent with the regulations and for the same inverted policy incentives they create against companies who are considering re-shoring or trying to expand existing operations in the United States. However, Coleman will address these additionally here because one really does seem to illustrate the staff's reasoning, although it is factually inaccurate, and the other actually implies that Coleman should *offshore* the very manufacturing that it is trying to re-shore.

In the first sub-key element on page 5, the staff claims that there are many "programs by mass retailers that encourage a broader view of cost reduction in their supply chains such as the 'Made

in America' program of Walmart." The staff cites a news article about Walmart and some FAQs from the Walmart website.

First, the term "broader view of cost reduction" is a new term that the staff seems to think means the exact opposite of actual cost reduction. Cost reductions are cost reductions. There is no broader or narrower view. The staff seems to have come up with an idea that paying more (100% more) for the delivered price of a key fabric input is somehow a cost reduction.

The most charitable interpretation that can be made of the staff's argument is that the staff thinks that there is some sort of premium offered by mass retailers for American made products. A review of both the cited article and FAQs make very clear that there is no such premium. The concluding paragraph of the article reads as follows:

> This isn't Walmart's first crack at a Made in America program. An earlier one fizzled, amid some bad publicity, because Walmart couldn't get enough low-priced merchandise to sell. Americans may love their country, but they will buy Chinese if the price differential is too high. **This time Walmart says consumers won't have to pay up to buy domestic.** "I hope the American consumer values this and we'll make it easy for them," says Mac Naughton. If not, consumers won't make it easy for Walmart.[15]

Thus, just as Coleman testified, there is no premium. Not surprisingly, the Walmart FAQs page cited by the staff also confirms this. One question asks: "Does this mean Walmart will be paying more for products if the company will be sourcing more of them in the United States?" The Answer states: "It does not mean that at all."[16]

The Answer goes on to explain all of the reasons why domestic sourcing can become price competitive and concludes: "This offers the ability to save additional costs through the supply chain." That is very true and it is why Coleman has been able to source over 60% of its inputs domestically from excellent U.S. suppliers. However, if, even with all of the advantages of flexibility, lower freight costs, etc., some suppliers still cannot meet the challenge, then the supply chain costs are not actually lowered and Coleman cannot use that domestic supplier. That is why Coleman sources its flotation foam from the U.S. manufacturer, Pregis, but cannot afford to pay a

[15] http://business.time.com/2013/04/12/how-walmart-plans-to-bring-back-made-in-america/ (emphasis added)
[16] "Walmart U.S. Manufacturing FAQs", https://cdn.corporate.walmart.com/51/c5/350e038c4f0cb9f171b5b5171055/us-manufacturing

100% premium for domestic fabric from Milliken. There is no "broader" definition of cost savings by which a 100% cost *increase* is actually a cost *savings*.

While the staff has cited Walmart's statements and policies, there is nothing unique about Walmart's situation here. Retailers have to meet market demand, and the staff is merely speculating, without support in the record, that consumers will pay a premium for domestically produced PFDs.

The final sub-key element starkly illustrates just how misguided the policy views are underlying the staff recommendation. The staff argues that Coleman should use its manufacturing flexibility to concentrate on "specialty retail and industrial markets" and offshore production of mass market recreational products. That is, the FTZ staff actually recommends that Coleman use its manufacturing flexibility to move its domestic manufacturing to higher-end products, *i.e.*, *to offshore the very products Coleman is attempting to re-shore.* This recommendation is contrary to the law and regulations and is stunningly inconsistent with what Coleman has understood to be the Administration's policy position in support of U.S. manufacturing. The Board must reject this poor policy recommendation by the staff.

Coleman also must note that this staff recommendation that Coleman shift its production to higher-end products and move the rest offshore reveals a basic misunderstanding of the manufacturing processes for apparel and similar textile-based products. Coleman has indeed achieved increasing levels of flexibility as it continues to innovate in the area of PFD manufacturing. However, it works precisely the other way around from what the staff suggests. For example, the contract for the product line that Coleman lost (see Appendix A) to Chinese competition was for a more complex PFD. The more complex products tend to require more individualized sewing and handling and this makes them *less* susceptible to re-shoring efforts at the present time. Coleman is at the inflection point now where it is working to re-shore more complex PFDs and the loss of this contract has been a setback. That is one of the main reasons why Coleman needs extra help in removing the offshoring incentive of the tariff inversion.

Finally, with regard to the last "key supporting element," the staff cites a statement in Coleman's application to support their view that domestic manufacturing represents 85% of the market. Market share is very hard to estimate. The reference from Coleman's application using imports of

$700 million and a 14-15% market share would imply a total "market" of approximately $4.7 billion. That is significantly too high and Coleman regrets the confusion. The import numbers also incorrectly included a large basket category.

There does not seem to be any good market information from trade associations or other sources, and the commercially available market information offered for sale does not seem reliable. Based on internal estimates of Coleman's share of the recreational PFD market -- **[** ** **]**[*] -- and the percentage of its imports of recreational PFDs -- **[** ** **]**[**]-- as well as Coleman's understanding about the limited nature of recreational PFD production in the United States, Coleman thinks it likely that it mistakenly inverted the calculation in the application. It considers it far more likely that imports account for 85% of the recreational market.[17]

In regard to market definition, Coleman notes that it has always intended the FTZ manufacturing authority to be applicable to the recreational market, even though at times reference has been made to the broader PFD market. There is no single such market for PFDs; there are three markets: military, industrial/commercial and recreational. A defining characteristic of the recreational market is the requirement for Coast Guard approval established by UL certification. As noted above, Coleman will include a proposed compromise in these Comments utilizing quantitative and time limitations. The proposed compromise will be based exclusively on production of PFDs for the recreational market segment.

Finally, in its "Summary and Conclusions," the staff argues that granting FTZ benefits would provide additional incentives for Coleman to purchase "such fabrics" from foreign sources.

For one thing, this conclusion reflects the staff's continuing failure to acknowledge that Coleman has not received a bid on polyester fabric from any domestic textile company. Also, the staff's

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[*] The estimated market share number reflects a change from previous Submissions reflecting the lost sale discussed in this Submission. Thus, in combination with other information contained in Submissions, the size and of the change could lead to revelation of specific business confidential information (including customer identity, product types and item-specific sales figures) on the lost sale contained in Appendix A. Revelation of such business proprietary information would directly harm Coleman. Providing a range would essentially reveal the information and would not satisfactorily maintain the proprietary nature of the information.

[**] The estimated share of imports in Coleman's current sourcing mix could, in combination with other information in Submissions reveal confidential customer and product information, as discussed in regard to the previous footnote.

[17] Coleman regrets the error on inverted the share that imports and domestic manufacturers account of the market.

conclusion applies the incorrect legal standard, apparently carried over from the CITA/OTEXA short supply determinations. It also fails basic arithmetic. The best offer for nylon fabric that Coleman has received from a domestic textile producer was at a 100% premium to the market price. Considering the duty is 14.9%, there is no incentive whatsoever to purchase such domestic fabric. Moreover, and contrary to the staff's final conclusions, Coleman has thoughtfully excluded from the present application certain materials that are sourced domestically – illustrating that the application is not purposed to exclude existing domestic suppliers.

If the application is denied, Coleman will lose. Coleman's domestic suppliers such as Pregis will lose, and the domestic textile industry will gain nothing at all. Disapproval will be a clear economic negative for the U.S. economy. On the other hand, approval subject to the proposal discussed below will support Coleman moving forward in expansion of manufacturing at Sauk Rapids without the penalty of the tariff inversion and still protect any potential commercial opportunities for the domestic textile industry, should they wish to pursue them.

Conclusion and proposal

While Coleman strongly believes that the facts, as outlined above, fully justify an unrestricted grant of manufacturing authority, Coleman is willing to offer the following compromise to facilitate a decision that enables Coleman's U.S. manufacturing operations to compete on a more equal basis with imports of PFDs. Any further delay, which keeps the scales tilted in favor of imported PFDs, only hinders Coleman's ability to maintain and expand production in Sauk Rapids.

Coleman is prepared to accept two restrictions on manufacturing authority in Sauk Rapids. First, leaving aside a permanent grant of authority, Coleman's preference would be for a 10-year duration. However, for the sake of compromise and to facilitate a positive decision, Coleman can accept a shorter duration, given that continuation of the status quo disadvantages our operations in Sauk Rapids. Therefore, Coleman proposes a 7-year time limit (subject to review and renewal). This would give Coleman an adequate duration to enable an acceptable return on the additional investment Coleman makes in Sauk Rapids. After the agreed upon duration, the FTZ board will be able to review the situation and determine if a further continuation of the manufacturing authority for the nylon and polyester fabrics provides a net economic benefit to the United States.

Second, Coleman is willing to accept annual quantity limitations. The domestic textile producers have never submitted bids on polyester. Even under the incorrect short supply approach, this would normally result in granting of full approval. Nonetheless, in hopes of achieving a constructive, mutually beneficial approach, Coleman would accept quantitative limitations on polyester (HTS subheading 5407.52.00) fabric that is entered for use in PFDs produced in the FTZ that would then enter the United States at an effective 4.5% duty, as normally applicable to finished PFDs. Coleman suggests 1.5 million linear yards[18] with an annual increase of 5%.

Coleman recognizes that the nylon fabric (HTS subheading 5407.42.20) has been of greater sensitivity and, therefore, suggests 800,000 linear yards with no growth rate.[19] The nylon used by Coleman for PFDs made in the FTZ also would enter the United States at the 4.5% duty rate applied to finished PFDs, which is the same effective duty rate paid for the fabric when it enters incorporated in PFDs made by Coleman's Asian sources and competitors.

Imports subject to these limitations represent a *de minimis* share of the U.S. market for nylon and polyester fabrics overall, as the domestic fiber industry attested to in the proceedings. Indeed, in light of these marginal quantities, Coleman has openly wondered if the domestic textile industry has any real interest in the PFD market in light of the uncompetitive bids and the plain lack of any interest in marketing to Coleman. Nonetheless, these time and quantity limitations provide the opportunity and incentive for both sides to work together constructively to see if a sourcing relationship can be developed.

In regard to the other items excluded from production authority issued pursuant to Coleman's 2014 notification, as noted previously in the proceedings, Coleman has identified a U.S. producer of webbing. Coleman therefore agrees with excluding HTS subheading 5806.32 from the application.

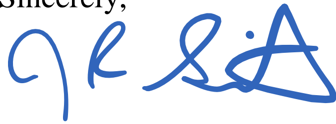
There was no interest shown by any U.S. manufacturer in any of the other textile products. They should all be included without limitation in the grant of production authority.

The spirit and word of the FTZ law and regulations is to balance interests and do what is best for the overall economic interests of the United States. Coleman's compromise solution provides that

[18] 1.5 million linear yards converts to 2,084,832 square meter equivalents (sme). Both the polyester and nylon limitations are for UL-approved fabric for the recreational PFD market.
[19] 800,000 linear yards converts to 1,111,910 sme.

opportunity. Coleman first submitted its notification of requested production authority over three years ago. When Coleman submitted its application for full production authority two years ago, Coleman specifically noted the Obama-era initiatives for reshoring manufacturing. That was a policy with great bipartisan and public support. The Trump Administration has taken the policy significantly further and made supporting domestic manufacturing its priority. FTZs can be an important implement in the Administration's toolbox, and the grant of Coleman's application would further this critical initiative to bolster manufacturing in the United States.

Sincerely,



Jeffrey R. Schmitt
SVP, Global Supply Chain

Enclosure: Appendix A

Appendix A***

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*** Appendix A contains product-specific lost sale information that is business proprietary and which specific revelation of would harm Coleman as it could reveal customer identity, product types and item-specific sales figures. The information is summarized on page 1, paragraph 2 of this Submission which also includes an estimate of the percentage of domestic production represented by the lost sale. See also further references on pages 8, 9 and 17.