



# International Affiliates

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## USA-ITA Chairman Janet Fox Featured in Just Style

The 2010 Prime Source Forum took place at the end of March in Hong Kong. Janet Fox, Chairman of the USA-ITA Board of Directors and Senior VP of Sourcing for JC Penney, presented at the Forum during a panel on trade policies. Afterward, she sat down with Joe Ayling from Just-Style for an in-depth interview, which is reprinted for you below.

### Speaking with Style: Janet Fox, JC Penney

27 April 2010 | Source: Joe Ayling

Modern day sourcing demands that retailers control their inventory and supplier matrix, while keeping tabs on the growing list of manufacturing hot-spots. just-style news editor Joe Ayling discusses the challenge with JC Penney sourcing boss Janet Fox.

The sourcing hub of Hong Kong is an apt meeting place for a sit down interview with Janet Fox, JC Penney's SVP & director of sourcing and chair of the US Association of Importers of Textile & Apparel (USA-ITA).

She has just stepped offstage after presenting to hundreds of delegates at Prime Source Forum, and without so much as a coffee adapts to a more intimate discussion with just-style. Accompanied to the interview with USA-ITA president Julia Hughes, we sit in a triangle of leather sofas in Prime Source's media room.

In both her responsibilities, Fox's remit is to free the flow of garments from global sourcing hot-spots to the US, making Hong Kong the perfect



base. Both Fox and her colleague are demanding the Obama administration gets its priorities right when it comes to textiles and apparel, especially now the President's Health Care Bill has been dealt with.

Unsurprisingly, Fox is resolutely anti-protectionist, and insists that wherever apparel manufacturing moves next, it should not be back to the US. "That business has left the US and it will not come back, just like it has left Japan and will not come back," she tells just-style.

#### Retailers learn lesson

It is the second consecutive year that Fox has appeared at Prime Source.

*Continued on page 8*

### In this issue:

#### COVER STORY:

**Speaking with Style: Janet Fox, JC Penney**

#### PAGE TWO:

**U.S. Process for Assessing Dumping Duties Unlikely to Change Anytime Soon**

*by Brenda A. Jacobs  
Sidley Austin LLP*

#### PAGE THREE:

**Update On U.S. Customs Value Decisions**

*by John Pellegrini  
McGuire Woods LLP &  
USA-ITA Customs Counsel*

#### PAGE FOUR:

**Twenty-Five Years After First U.S. FTA, Trade Benefits Stretch Across Middle East**

*by International Development Systems*

#### PAGE FIVE:

**Regulatory Updates**

*USA-ITA, established in 1989, is the largest U.S. trade association for importers and retailers of textile and apparel products. Headquartered in Washington, DC, USA-ITA is the voice for the industry before Congress, the Administration, the business community and the public, as well as industry groups and governments around the world.*

## U.S. Process for Assessing Dumping Duties Unlikely to Change Anytime Soon

By Brenda A. Jacobs, Sidley Austin LLP

A public comment process and a hearing conducted by the U.S. Department of Commerce (Commerce) last month have sparked hope among many suppliers of consumer goods to the U.S. market and their U.S. importers that the United States will revamp its system for assessing antidumping and countervailing duties to make it more predictable. The political reality, however, is that so long as U.S. manufacturers, who are the petitioners who file complaints alleging that foreign producers are selling goods in the U.S. market at unfair or subsidized prices, believe that the current system is better able to protect them from “unfair” competition, little is likely to change.

The United States is the only major economy in the world that employs a “retrospective” system for assessing and collecting antidumping and countervailing duties on imports. Other countries use a “prospective” system. In principle, they are both legal under World Trade Organization rules.

Under the retrospective system, importers pay “cash deposits” equal to the estimated antidumping and countervailing duties (if any) applicable to goods that enter the United States at the time of importation. However, the final amount of duties owed is determined much later, at the time of liquidation, after Commerce has conducted a review of the imports subject to such duties, and after any judicial challenges of the results of that review have been exhausted.

This process can take years and can result in the calculation of a final duty amount that exceeds the amount of cash deposited. By that time, the importers may be financially unable to pay the duties and unscrupulous importers may have disappeared. The importers could even be the exporters acting as importer of record in order to satisfy buyers concerned about holding their books open indefinitely or being able to price goods at retail with certainty.

As a result, the U.S. government is sometimes unable to collect the full antidumping and countervailing duties owed by importers. That has generated a multitude of complaints that these duties are being circumvented or evaded, undermining the protection petitioners thought they had won.

In contrast, under a prospective duty system, duty rates are calculated based on data regarding historical levels of dumping and subsidies, and those rates are applied to future entries of goods at the time of importation. There may still

be reviews to determine if the amount of dumping or subsidies has changed, but any new determination is applied prospectively. Not surprisingly, that holds a lot of appeal for U.S. importers, particularly for retailers of consumer goods.

In written comments and in testimony at the hearing conducted by Commerce, importers and retailers argued that a prospective system is needed because the current system makes it impossible to know the final cost of an imported input often until several years go by, which creates enormous uncertainty. As one company noted, it is irrational to try to conduct business when the cost of inputs cannot be known up front. One retailer stated that there is a growing number of cases in which final import duties are significantly increased years later, which is a costly surprise to large companies, but a “business destroying” factor for smaller companies.

Another retail representative stated that retailers want to be told what the fair price is for imports so they can know what it is and either pay it up front or find alternatives. Other importers said they are so wary of the retroactive application of duties that they simply do not import goods that are within the scope of an antidumping or countervailing duty order.

Importers also advised Commerce that the retrospective system is largely to blame for the problem of uncollected duties, since it has allowed importers to post bonds on future liabilities, and this has allowed unscrupulous importers to skip out on final duties once the amounts are calculated. For the same reasons, these witnesses argued that a prospective system would reduce incentives for importers to evade duties, and should be no more burdensome on Commerce to administer.

Some witnesses added that a prospective system would help root out what they called “extortion” that occurs in the current system. One lawyer noted that numerous side agreements have been struck in which importers pay petitioners significant amounts not to compel an administrative review



*Continued on page 7*

## Update On U.S. Customs Value Decisions

by John Pellegrini, McGuire Woods LLP & USA-ITA Customs Counsel



The following is a summary of recent value decisions issued by the Headquarters Office of Customs and Border Protection (“CBP”).

### **Customs Rules That Bonus Payments to Vendors Are Subject to Import Duties**

In Customs HQ ruling H082475 (issued on March 2, 2010), Customs considers the treatment of certain payments awarded under the importer’s program for maximizing delivery times. The importer introduced a supply change initiative designed to increase on-time deliveries of shipments eliminating instances where products are out of stock.

Under the program, when the specified percentage of a vendor’s shipments qualifies as timely, the vendor is awarded a bonus payment applicable to all shipments made during the evaluation period. The payment is a fixed dollar amount for each container shipped during the period. These payments do not depend upon any individual import transaction, are not linked to the price paid or payable for the merchandise and are not ascertainable at the time of entry.

The Headquarters Office agreed that payments at issue were made by the importer to its suppliers in consideration for one-time delivery of the imported merchandise pursuant to the logistics program. The fact that the amount of the bonus, or indeed whether any bonus would be paid, was not ascertainable at the time of entry was not deemed a sufficient basis on which to conclude that the payments were not dutiable.

The ruling points out that the bonus payments were ascertained according to a formula created prior to exportation. Therefore, CBP determined that the price was set prior to exportation (a dubious argument).

The Headquarters Office ruled that the payments made by the importer to the vendors under the bonus program are included as part of transaction value. The ruling states that since the payments at issue are made from the buyer to the seller and are linked to the imported goods, they are dutiable.

### **Customs Sides with Importer on First Sale Rule Determination**

In HQ H036078 (December 18, 2009), the Headquarters Office reviewed a first sale question. The first sale issue arises in three-sided transactions; importer, middleman and manufacturer. Under certain conditions, transaction value is the price paid to the manufacturer by the middleman rather than the higher price paid to the middleman by the importer. Sufficient documentation establishing that there was a sale from the manufacturer to the middleman and that the sale was one for exportation to the United States is sometimes a problem.

In this ruling, the subject merchandise was liquidated at the price paid by the importer to the middleman. The importer filed a protest. To support the “first sale” claim, the importer submitted; (1) a copy of the purchase order to the middleman; (2) a copy of the sales contract between it and the middleman; (3) copies of the purchase orders and sales contracts between the middleman and the manufacturers; (4) translated copies of the invoices from the manufacturers to the middleman; (5) proof of payment to the manufacturers; (6) a copy of the middleman’s invoice to the importer; and (7) a copy of the bill of lading showing the middleman as a shipper and the importer as the consignee. In addition, the file contained a copy of an export license showing the middleman as the exporter.

The entire focus of the ruling was the adequacy of the documentation described above. The ruling points out only one irregularity in the documents submitted - one of the contracts between the middleman and one of the manufacturer’s predates the purchase order between the middleman and the importer. The importer informed CBP that it places orders by telephone which it subsequently confirms with a formal purchase order. This explanation was accepted by the Headquarters Office.

The only other point made in the ruling was that the fact that the documentation referred to above was not provided to CBP prior to liquidation but only in connection with a protest, does not detract from the claim.

Based on the documentation provided, the Headquarters Office ruled that the proper appraised value was the price between the middleman and the various manufacturers.

## Twenty-Five Years After First U.S. FTA, Trade Benefits Stretch Across Middle East

*by International Development Systems*



Twenty-five years after the U.S. signed its first Free Trade Agreement (FTA), one of the most successful U.S. trade programs for apparel remains a provision developed after it entered into force. The U.S.-Israel FTA was signed on April 23, 1985. The two countries negotiated an extension of the FTA in the 1990s that allowed for Qualified Industrial Zones (QIZs) in third countries. The purpose of the QIZs is to promote economic integration and peace in the Middle East.

From 1985, to the time the first QIZ opened in 1998, U.S. textile and apparel imports from Israel had more than quadrupled, rising from 72.4 million square meter equivalents (SME) to 298.4 million SME. Today, these imports are up to 507.9 million SME – mostly in fabrics. The following table shows the top four U.S. imports from Israel that are duty-free:

Category	Share of Israel	Market Share	Duty-Free
229 (Cotton and Man-Made Fiber Special Purpose Fabric)	28.21	8.01	99.65
652 (Man-Made Fiber Underwear)	4.13	3.95	99.43
369 (Cotton Other Manufactures not elsewhere specified)	1.77	0.26	74.76
600 (Man-Made Fiber Yarns of Textured Filament, whether or not Artificial)	1.45	1.21	98.42

Under the QIZ program, apparel and luggage made in the QIZs - and subject to an Israeli content requirement - is eligible for duty-free entry into the United States. The first QIZs in Jordan were designated in 1998 and in Egypt in 1999. Today, there are twenty-four QIZs - eighteen in Jordan and six in Egypt.

The QIZs have been enormously successful in promoting U.S. imports from the region through integration with Israel. Ninety-eight percent of U.S. textile and apparel imports from Egypt enter duty-free using this program. The following table shows the top five U.S. imports from Egypt:

Category	Share of Egypt	Market Share	Duty-Free
348 (Women's & Girls Cotton Trousers and Shorts)	15.40	2.77	98.71
347 (Men's & Boys' Cotton Trousers and Shorts)	13.90	3.79	98.65
647 (Men's & Boys' Man-Made Fiber Trousers and Shorts)	7.42	4.96	97.37
665 (Man-Made Fiber Floor Coverings)	6.95	20.79	5.44
338 (Men's & Boys' Cotton Knit Shirts)	5.58	1.61	98.67

Even after the U.S.-Jordan FTA was signed in 2000, U.S. textile and apparel imports from Jordan relied heavily on the QIZs for the year ending February 2010. Almost seventy-five percent of these imports enter under the QIZs, compared to just twenty-four percent under the FTA.

However, the final textile and apparel duties on U.S. imports from Jordan were phased out effective January 1, 2010. The two months of data available for 2010 reflect a shift toward FTA-qualifying trade. So far in 2010, FTA imports represent thirty-two percent of U.S. textile and apparel imports from Jordan.

The following table shows the five top categories, their share of U.S. imports from Jordan, and whether they enter using the FTA or QIZs.

Category	Share of Jordan	Market Share	FTA	QIZ
348 (Women's and Girls' Cotton Trousers & Shorts)	16.26%	1.71	65.06%	32.30%
639 (Women's and Girls' Man-Made Fiber Knit Tops)	12.84%	3.42	0.43%	95.19%
339 (Women's and Girls' Cotton Knit Tops)	11.62%	1.48	2.72%	95.78%
652 (Man-Made Fiber Underwear)	10.89%	3.44	79.24%	12.72%
638 (Men's and Boys' Man-Made Fiber Knit Tops)	10.06%	3.22	0.41%	94.28%

## Regulatory Updates

### CPSC Approves Proposed Notice of Rulemaking on Drawstrings

On April 28, the Consumer Product Safety Commission approved publication of a notice of proposed rulemaking to designate that children's upper body garments with drawstrings are a "substantial product hazard." Such a designation would effectively turn what is currently a voluntary standard into a mandatory standard, and will permit the agency to refuse admission into the United States of non-compliant garments.

The action is being taken under section 15j of the Consumer Product Safety Act, as amended by the Consumer Product Safety Improvement Act, which says that the Commission can specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed "a substantial product hazard" so long as:

- the characteristics are readily observable
- there is voluntary standard,
- such standard has been effective at reducing the risk of injury, and
- industry is in substantial compliance with such standard.

Under the proposed rule:

- Drawstrings are not permitted at all at the neckline of garments sized 2T through 12.
- Drawstrings at the waistline are permitted in garments sized 2T through 16 only so long as they are not more than 3 inches in length and there are no toggles, knots, or other attachments at the free end. If the waist drawstring is one continuous string, it must be bartacked or sewn to the garment at the midpoint of the channel so that it cannot be pulled out of the channel. Fully retracting drawstrings are contained within the garment and are exempt.

The proposed rule also attempts to deal with sizing that is not numbered, such as size medium or extra large. According to the proposed rule, a size medium or large will be considered a size 12 or 14 and therefore within the scope of both the neck and waist rules. A size extra-large will be considered a size 16, within the scope of waist rule.

The proposed rule would be effective 30 days after the final rule is issued. A Federal Register setting out the proposed rule, and providing a comment period, is expected to be published soon.

It should be noted that once designated as a substantial product hazard, drawstrings in children's upper body garments will be subject to a reporting requirement and may be subject to a corrective action (in addition to non-compliant imports being refused admission). The proposed rule expressly states that the standard does not preempt state requirements.

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### Divided CPSC Approves Publication of Proposed Rule and Comment Period for Public Database

The CPSC on April 15 decided by a 3-2 vote to approve a proposed rule for publication and comment that outlines how the CPSC may implement a product safety incident database for consumers. The vote came after more than six hours of debate and the offering of numerous amendments by the two Republican commissioners, most of which were rejected by the three Democratic commissioners.

The close vote reflects deep divisions within the Commission over the controversial database, which the CPSIA says must include reports of harm, information about voluntary corrective actions taken by the manufacturer, and manufacturer comments received by the CPSC on reports of harm. Democratic commissioners support it as a needed (and legislatively required) product safety tool, while Republicans have demanded safeguards to ensure that the database does not become a quick and easy (and anonymous) way to attack companies by publicizing alleged safety hazards.

The proposed rule approved for publication makes explicit that almost anyone could submit a report to the database, including consumers (plus relatives and friends of consumers), any government entity, healthcare professionals, child service providers, public safety entities, and a broad "others" group including attorneys, investigators, NGOs, consumer advocates and trade associations. Under the proposed rule, submissions would need to include a description of the product, the manufacturer or private labeler, description of the harm done, contact information for the submitted, and a verification statement. But the CPSC will not publish the name or contact information of the submitter, the name of the "victim," photographs depicting harm done, medical records or other confidential information.

Once a report of harm is submitted, the Commission will send it to the manufacturer of the product in question, which then has an opportunity to comment.

*Continued on page 6*

The proposed rule says the CPSC will try to publish reports of harm and associated manufacturer comments on the database as soon as possible, but “no later than 10 days after such report of harm is transmitted to the manufacturer or private labeler by the CPSC.” It does foresee publishing only a report of harm without a manufacturer comment in certain cases, such as when a manufacturer does not submit a comment on time or when the CPSC is “resolving a claim that the manufacturer comment contains materially inaccurate information.”

The draft rule sets out a process by which manufacturers can request that a report of harm keep confidential some information, but manufacturers must offer justification when making these requests, including a statement on how the release of certain information would cause “substantial harm” to the company’s competitive position.

The proposed rule also says the database will include “all information” presented in a voluntary or mandatory recall notice that is publicly available, and allows the CPSC to present information that it feels is in the public interest related to consumer safety.

Finally, the proposal expands on how the CPSC will go about judging the accuracy of information posted on the database. It says any party can request that inaccurate information be removed from a pending or a published report of harm, but must provide evidence that the information is untrue. In the case of reports that have not been posted, the CPSC can use this information to either not add a report of harm to the database, correct a portion of the report based on the information received, or add information to the report to correct it. For claims of incorrect information in reports that are already in the database, the CPSC can either remove the report, add new information, or correct the information depending on the information it received.

The draft rule says the CPSC “shall favor correction and addition to correction over exclusion of entire reports of harm and manufacturer comments where possible.” In any case, the CPSC will notify parties when it decides there is no inaccurate material in a report of harm.

The hearing started with the offering of a proposed substitute rule by Commissioner Robert Adler, which drew criticism from Republican Commissioners Anne Northup and Nancy Nord, who said the substitute was only delivered the night before and that they did not have enough time to review it adequately.

Among Adler’s suggested changes were the addition of language that says companies bear the burden of proof in showing that certain information should be kept confidential and not put on the public database or that information is materially inaccurate, and a requirement that companies requesting that some information be kept confidential put in writing that they would help the CPSC defend this decision if it is challenged.

Adler also proposed language that he said would give companies an incentive to submit requests for confidentiality that are five pages or less, in order to help the CPSC expedite these decisions. And he proposed language saying the CPSC may withhold reports of harm until claims in those reports can be verified, but that the CPSC will lean toward publishing the reports.

Northup and Nord together challenged Adler’s addition that manufacturers have a burden of proof to show why information contains inaccuracies, and won a 3-2 vote to remove Adler’s addition and pose a question in the rule about this proposal that interested parties can comment on. (Democratic Commissioner Thomas Moore voted in favor of the Northup/Nord proposal.)

Ultimately, the CPSC approved Adler’s substitute, as revised, by a 3-2 vote, and then moved onto a series of other amendments from Northup and Nord, most of which were defeated. Among the defeated Northup/Nord amendments were proposals to:

- Eliminate the “others” category of people who can submit reports (lawyers, investigators, NGOs, consumer advocates and others);
- Ensure that those who submit reports have first-hand knowledge of the product safety incident being described;
- Require submitters of reports to identify people harmed by the product in question;
- Require that reports of harm be about a specific incident;
- Require the those submitted reports include the date and location where the harm took place;
- Ensure that only reports that are submitted after the database is created appear on the database;
- Send alerts to consumers when information on the database is being challenged;
- Limit the time within which the CPSC must decide whether to accept or reject a manufacturer’s claim that information in a report is inaccurate, and;
- Warn filers that it is a violation to deliberately file false information.

*Continued on page 7*

### **House Committee Asks Retailers About Cadmium in Children's Jewelry**

On April 16, the House Committee on Energy and Commerce, and its Subcommittee on Oversight and Investigations, wrote to three retailers requesting additional details about reports of high levels of cadmium in children's jewelry. The committee has asked the retailers (Claire's Stores, Inc.; Wal-Mart Stores, Inc., and Dollar N More, Inc.) to delivery testimony and a written account of their store activities to identify, address and prevent hazardous materials from being used in children's jewelry and other products.

The questions asked include:

1. All company policies and procedures related to preventing the sale of products intended for children that contain hazardous materials;
2. A list of all manufacturing and distribution companies that supply the company with children's jewelry and products intended for children. Those companies that manufactured and distributed items containing cadmium, including the items that were identified in the AP's investigation, should be also identified.
3. A written explanation of the steps the company takes to confirm that products intended for children are safe. This should include:
  - a. All company policies and procedures related to ensuring that products intended for children do not contain hazardous materials.
  - b. All steps taken to ensure the safety of products intended for children at every stage of the supply chain, prior to the company's receipt of the product, including steps taken by manufacturers, suppliers, and distributors.
4. All changes to company policies and procedures since January 10, 2010, to ensure that products intended for children do not contain hazardous materials.

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### *Assessing Dumping Duties continued from page 2*

of duty rates in a prior period, suggesting that the elimination of retroactive application of higher duties would make such threats less viable.

U.S. producers, however, do not want to see the U.S. system changed. These producers argue that the retrospective system is the most open and transparent system, and that it gives the U.S. the luxury of adjusting duties in response to changes in practices. They also contend it allows for a far more accurate calculation of duties than what would be afforded in a prospective system – and that this accuracy should not be sacrificed for the higher degree of certainty that importers want to gain through a prospective system.

U.S. petitioner interests are concerned if a prospective duty rate were established, exporters could increase dumping or subsidies without any fear of a retroactive assessment of what the proper duty should have been. Producers contend that certainty for U.S. producers needs to be considered just as much as certainty for U.S. importers.

At its April 27 public hearing, Commerce officials acknowledged several times that it is difficult to compare a retrospective system with a prospective system because there is no detailed proposal for what a U.S. prospective system might look like. Even the Canadian and European prospective systems are implemented very differently, and

arguably neither is as transparent as the U.S. system.

Yet, assumptions by particular importer or producer interests about how a U.S. prospective system would work clearly influence its likely advantages or disadvantages.

Commerce requested views from the public only because Congress directed the agency to explore the differences between the two systems and report back to Congress by June 14, 2010. The Congress was reacting to complaints that not all the duties are being collected and wants to determine if changing from retrospective to prospective would prevent duties from going uncollected.

U.S. importers, however, immediately saw an opportunity to get the U.S. Government interested in solving their concerns about the unpredictability of antidumping and countervailing duties. Once Congress sees how little interest American manufacturers – their constituents (voters) – have in giving up the retrospective system and how much work would be required to change the rules, maintaining the status quo may seem far more important.

The Commerce report is likely to simply present the arguments of each side without indicating that the U.S. Government has any interest in re-writing these complex laws and procedures.

In 2009, with the global economy in a critical state, Fox presented the case for a Government rescue for ailing retailers. This year, speaking to just-style at the sidelines of the event, she painted the picture of a retail industry that had learnt its lessons.

She says: “The economic crisis taught retailers a lesson on how much inventory they really need sitting on their shelves in store, and it really made us focus on better store strategies, inventory management, and being able to read sales and chase orders was the norm last year and has really become the standard now of how you do business.

“The days of bulk ordering your whole season, or 70% of the season, your goods are really over at companies like JC Penney. We work closely with a very tight matrix of suppliers and partner with them on production planning all the way back to the raw materials and pre-positioning our materials so that you can react much quicker than in the past.”

Fox has held her current role at JC Penney since March 2008, and in addition to sourcing has experienced the retail, textile and apparel sides of the business for 25 years now.

### **Chinese currency issue**

In Fox’s presentation to the forum this year, she advises Washington congress members calling for the Chinese Government to allow its currency to rise in value against the dollar to “back down a little”.

“I don’t think the US consumer is quite ready yet to pay higher prices for apparel and textiles out of China,” she tells delegates.

However, she later tells just-style that despite this, importers have their eggs in sufficient baskets to withstand a revaluation of the Yuan, and the higher export prices it would result in.

“While China is one of the more efficient countries of origin it’s not necessarily the most inexpensive even today to do business in. There are some products other than textile and apparel that you’re not able to move out of China as quickly though,” she says.

### **Multi-sourcing**

So which countries are breathing down China’s neck when it comes to sourcing footwear and apparel? Fox identifies Bangladesh and Indonesia as leading the charge.

She says: “When you look at Bangladesh, there’s a lot of opportunity. It’s the lowest labour cost email there is at the moment, there is an ample and able workforce there, labour costs are low and the country’s largest export is apparel.

“Another is Indonesia, which I think will grow even more if we can

get some raw materials production there. We need some more fabric mills, and more localisation so there can be virtual verticalisation of the industry. In regard to factories, Indonesian factories are second to none.”

The objectives of the USA-ITA are unlikely to fall on deaf ears in Washington with Fox at the helm. She brings a healthy mixture of American spirit and global perspective to the table.

Of particular interest currently are garment makers in Haiti, and the setting up of effective reconstruction opportunity zones (ROZs) in Pakistan.

Fox says: “This was something [ROZs] that was initiated during the Bush administration, and it was ill-conceived at the time as to where they wanted to put these ROZs, including on the Afghan border. These were places nobody would put a factory.

“There’s been a lot of work done on trying to ensure that doesn’t just become a hollow gesture Bill because right now special interests are trying to carve out the products that they actually make there, which is predominantly cotton product.

“If you really want to help Pakistan now, the infrastructure’s in place for textile and apparel.”

Therefore, Fox clearly believes there is scope for sourcing outside the giant Chinese market, with Bangladesh, Indonesia and Pakistan among many other rising destinations.

It seems that while importers need to develop far-reaching supply chains, the mechanics of post-recession retailing are leaner than ever.

Striking this balance requires a very smart Fox.

