UNITED STATES – RULES OF ORIGIN FOR TEXTILES AND APPAREL PRODUCTS (WT/DS243)

Responses of the United States
To India's Questions for the United States
Following the First Meeting of the Panel

January 6, 2003

1. Does the United States use criteria for the determination of origin other than those listed in Article 2(a) of the ARO? If so, what are those criteria?

1. No, the United States does not use criteria for the determination of origin other than those listed in Article 2(a), although clearly Article 2(a) is not an exclusive list, either for origin determinations of textile and apparel products, or any other products.

2. Please indicate the criterion or criteria for the determination of origin on which the "fabric forward rule" set out in Section 334 is based.

2. The determination of origin in Section 334 is based on the third criteria in Article 2(a), manufacturing or processing operations.

3. Please indicate on which criterion or criteria for the determination of origin the following product distinctions foreseen in Sections 334 and 405 are based:

- ***Articles made from cotton and articles made from wool;***
- ***Articles made from fabrics with different fibre blends; and***
- ***The HTS headings listed in Section 334 and the HTS headings listed in Section 405.***

3. *See* United States Answer to Panel Questions, question 9.

4. As explained paragraph 28 of India's oral statement, under Sections 334 and 405, a country may forego the status of originating country by further processing a product in its territory, depending on the type of product or the fibre content of the product. Please indicate on which criterion or criteria for the determination of origin the United States based the rule that leads to this result.

4. As the United States explained at the meeting with the Panel, India's assertions in paragraph 28 regarding the exceptions in Section 405 are based on a disagreement with the United States as to where the most significant or important manufacturing or assembly of a product has taken place.

5. Is the United States aware of any other Member of the WTO that:

- ***Applies the "fabric forward" rule,***
- ***Makes distinctions of the type referred to in question 3,***
- ***Does not recognize further processing of a product as origin-conferring.***

If so, who are these Members and what are their practices?

5. Of the approximately 38 Members that have submitted rules to the WTO and that have non-preferential rules of origin, as the United States has indicated in its submissions, to our knowledge the EC and Canada have rules similar to the U.S. rules for assembled textile products. The United States has not surveyed other Members' rules of origin regimes.

6. Does the United States itself use rules of origin for products other than textiles and apparel products according to which:

- ***The further processing on an input cannot change the origin of a product under any circumstances,***
- ***The origin depends on the blend of raw materials used in the production of an input, and***
- ***The further processing of a product deprives the processing country of its status of originating country?***

6. The United States does not agree with India's interpretation of its rules of origin for textile and apparel products. Subject to this *caveat*, U.S. rules of origin for non-textile and apparel products are not based on any of the factors listed above. As we have noted before, sometimes further processing of an input will not change origin - - it depends on whether that further processing causes a substantial transformation.

7. Is the United States of the view that requirements to be met by producers and traders as a result of the "fabric forward" rule and the different treatment of (a) articles made from cotton and articles made from wool and (b) articles made from fabrics with different fibre blends are "unduly strict requirements" within the meaning of Article 2(c). If not, why not?

7. No. In the first place, we note that the rules of origin for the two products referenced are consistent with the requirements of Article 2, and a comparison of the two rules is irrelevant for purposes of Article 2(c). These rules relate to different products. See also, United States Answers to Panel Questions, question 11.

8. According to Article 2(c), "rules of origin . . . shall not require the fulfillment of certain conditions not related to manufacturing or processing". In relation to this provision India has the following questions:

- ***Would the United States agree that Article 2(c) of the ARO implies that, in the***

case of a rule of origin designed to determine the origin of a product manufactured or processed in more than one country, Article 2(c) implies that the conditions to be fulfilled must in some way be related to the degree of manufacturing or processing that the product underwent in the different countries? If not, why not?

8. No, there is no basis in the text for India's suggestion.

- ***The United States rules of origin distinguish between a made-up article consisting of fabric containing 85% man-made fibre and 15% cotton and a made-up article consisting of 80% man-made fibre and 20% cotton. Please explain how this distinction can be reconciled with the requirement set out in Article 2(c) of the ARO that all conditions that must be fulfilled to obtain the status of originating country must relate to manufacturing or processing.***

9. As the United States has explained, Article 2(c) does not prescribe that Members must use the same rules to determine the origin of different products. See also United States Answers to Panel Questions, question 9, and our response to question 7 above.

9. Would the United States agree that conferring origin on the basis of narrow product distinctions designed to favour the exports from one Member over those from others would, in principle, be a trade objective covered by Article 2(b) of the ARO and discrimination within the meaning of Article 2(d) of the ARO? If not, why not?

10. No. *See* United States Answers to Panel Questions, question 6.

10. Would the United States agree that, for the purpose of determining whether a rule of origin is used as an instrument to pursue trade objectives within the meaning of Article 2(b) of the ARO, the circumvention of quota limits through transshipments, false declarations and other illegal means should be distinguished from the avoidance quota limits through the reallocation of production and other legal means and that rules of origin designed to prevent the avoidance of quota limits should be deemed to pursue trade objectives? If not, why not?

11. Assessing whether a distinction exists between circumvention and "reallocation of production" cannot be undertaken in a vacuum, without a fact pattern as a context. Experience shows that "reallocation of production" encompasses a broad spectrum of activity in the trading world, ranging from complete production to merely sewing on labels - - with numerous points in between. Maintaining the integrity of trade instruments is also a matter that can extend beyond merely making direct actions at addressing illegal behavior, and can include providing certainty through the establishment of product-specific rules of origin. *See also* United States Answers to Panel Questions, question 18.