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**UNITED STATES - MEASURES AFFECTING TEXTILES
AND APPAREL PRODUCTS (II)**

Request for Consultations by the European Communities

The following communication, dated 19 November 1998, from the Permanent Delegation of the European Commission to the Permanent Mission of the United States and the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the United States of America pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 8.4 of the Agreement on Textiles and Clothing, Article 7 of the Agreement on Rules of Origin, Article 14.1 of the Agreement on Technical Barriers to Trade (TBT Agreement) and Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 94") regarding the change to US rules of origin for textiles and apparel products.

This issue has already been discussed between the United States of America and the European Communities and a solution was mutually agreed in July 1997 and notified to the Chairman of the Dispute Settlement Body on 11 February 1998. However, the European Communities consider that the United States of America has not implemented its commitments as contained in this agreement with the result that, in the view of the European Communities, the situation remains inconsistent with US obligations under WTO rules.

The United States of America has introduced changes to its rules of origin of textile and apparel products, which entered into force on 1 July 1996. Some of these rules, in particular the rules contained in Section 334 of the Uruguay Round Agreements Act and implemented through Customs regulation, adversely affect exports of European Communities fabrics, scarves and other flat textile products to the United States of America. As a result of this change, European Community products are no longer recognised in the USA as being of EC origin and lose the free access to the US market that they enjoyed before.

The European Communities consider that these changes are not in conformity with the obligation of the United States under the WTO Agreement on Textile and Clothing. Article 2.4 of the Agreement on Textile and Clothing requires that no new restriction in terms of products or Members shall be introduced. Article 4.2 of the same Agreement prescribes that the introduction of changes in the implementation of administration of restrictions notified to the WTO shall not: upset the balance of rights and obligations between the Members; adversely affect the access available to a Member; impede the full utilisation of such access; or disrupt trade under the Agreement. The European

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Communities are of the view that the change in US rules of origin causes precisely those effects and that the United States should have initiated consultations with the European Communities prior to the implementation of such changes, in accordance with Article 4.4 of the Agreement.

Moreover, the European Communities question the compatibility of the above-mentioned changes in US rules of origin with Article 2 of the Agreement on Rules of Origin which contains disciplines that a Member must abide by when changing its rules of origin during the transitional period. These disciplines prescribe, *inter alia*, that "... (b) the rules are not used as instruments to pursue trade objectives, directly or indirectly, (c) they shall not themselves create restrictive, distorting or disruptive effects on international trade, (...) and (e) they are administered in a consistent, uniform, impartial and reasonable manner". The European Communities are of the view that the new US rules of origin do not respect such requirements.

Finally, the European Communities are of the view that the US requirements on country of origin marking correspond to a technical regulation as defined in Annex I to the TBT Agreement and, as applied since the changes to the US rules of origin, do not guarantee to imported Community products a treatment equivalent to the one granted to domestic products. This difference in treatment is not compatible with Article III of GATT 1994 and Article 2 of the TBT Agreement.

The European Communities look forward to receiving your reply to this request. I propose that the date and venue of these consultations be agreed between our two missions.
