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UNITED STATES – RULES OF ORIGIN FOR TEXTILES AND APPAREL PRODUCTS

Request for Consultations by India

The following communication, dated 11 January 2002, from the Permanent Mission of India to the Permanent Mission of the United States and to 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 pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT") and Article 7 of the Agreement on Rules of Origin (the "ARO") regarding the rules of origin for textiles and apparel products set out in Section 334 of the Uruguay Round Agreements Act, Section 405 of the Trade and Development Act of 2000 and the customs regulations implementing these provisions. India's main concerns are set out below. India reserves its right to raise further issues during the course of the consultations.

Section 334 of the Uruguay Round Agreements Act changed the rules of origin applicable to textile and apparel products as from 1 July 1996. Prior to that change, textile and apparel products, like other industrial products, could be conferred the origin of a country if they had undergone "substantial transformation" in that country. The main changes introduced by Section 334 were the following:

- Fabrics are deemed to originate in the country where they were formed in the greige state by weaving or knitting. Dying, printing and other finishing operations that are ordinarily performed to turn greige fabric into a useful article of commerce no longer confer origin.

- A wide range of made-up non-apparel products, such as silk scarves, blankets as well as bed, table and kitchen linen, are deemed to originate in the country where their constituent fabrics are formed into the greige state.

- For apparel products, the origin is deemed to be the country where the assembly takes place, which means that the country where the component parts were cut into shape can no longer be the country of origin.

The main objective of the above changes appears to have been to protect the United States' textiles and clothing industry against import competition.

The European Communities ("EC") considered the above changes to be inconsistent with the United States' obligations under the ARO and other WTO agreements, and initiated dispute settlement proceedings against them (WT/DS85/1). The EC withdrew the complaint when the United States agreed to introduce legislation restoring the previous rules in respect of certain products. However, the legislation actually introduced did not satisfy the EC, and it therefore initiated new dispute settlement proceedings (WT/DS151/1). This dispute was settled through a *procès-verbal* according to which the United States agreed to introduce legislation modifying the Section 334 rules of origin for certain products (WT/DS151/10). Section 405 of the Trade and Development Act of 2000 gives effect to this *procès-verbal*.

The main consequences of the changes set out in Section 405 are the following:

- The pre-1996 rules of origin for fabrics made of silk, cotton, man-made fibres and vegetable fibres are restored. This means that these fabrics are again deemed to originate in the country in which they are formed or dyed and printed, and have undergone at least two specified finishing operations.

- Wool fabrics are excluded from the above change. Their origin continues to be the country in which they are formed into the greige state, irrespective of any finishing operations.

- The pre-1996 rules of origin are partly restored for certain made-up non-apparel goods falling under specified US HTS numbers. These include: shawls; scarves; mufflers; handkerchiefs; bed; table, toilet and kitchen linen; curtains and interior blinds; bed spreads; other furnishing articles; and stuffed bedding/furnishing articles. These goods are thus deemed to originate in the country in which their constituent fabrics are dyed, printed and subjected to two more finishing operations.

- The above change does not apply when the constituent fabric is wholly or in chief weight of wool or cotton, or contains more than 16 percent cotton by weight.

- For made-up non-apparel goods that do not fall under the specified US HTS numbers, the origin continues to be the country in which the constituent fabric is formed in the greige state. Such other goods include: quilted textile products; blankets and travelling rugs; sacks and bags; tarpaulins, tents and camping goods; floor cloths and dish cloths.

The main objective of the changes that the United States introduced in 2000 in accordance with the *process-verbal* appears to be to modify the rules of origin challenged by the EC in a manner that takes into account the particular export interests of the EC.

As a result of the changes introduced in 1996 and 2000, the United States' rules of origin now distinguish, *inter alia*, between:

- textiles or apparel products and other industrial products;
- fabrics made of wool and fabrics made of other fibres;
- different made-up non-apparel products that have undergone identical processing operations;
- certain made-up non-apparel products processed from fabric made of wool or cotton and those processed from fabric made of other fibres; and

- made-up non-apparel products made of fabric with more than 16 per cent cotton and those made of fabric with 16 per cent or less cotton.

The changes introduced in 1996 and 2000 thus resulted in extraordinarily complex rules under which the criteria that confer origin vary between similar products and processing operations. The structure of the changes, the circumstances under which they were adopted and their effect on the conditions of competition for textiles and apparel products suggest that they serve trade policy purposes. India therefore questions the compatibility of these changes with paragraphs (b), (c), (d) and (e) of Article 2 of the ARO, according to which rules of origin shall not be used as instruments to pursue trade objectives; shall not pose unduly strict requirements; shall not themselves create restrictive, distorting or disruptive effects on international trade; shall not be discriminatory; and shall be administered in a consistent, uniform, impartial and reasonable manner.

India looks forward to receiving your reply to this request. I propose that the date and venue of these consultations be agreed between our two Missions.