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RULES OF ORIGIN

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ITCB

INTERNATIONAL TEXTILES AND CLOTHING BUREAU

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ABOUT THE ITCB

ITCB is an intergovernmental organisation of developing countries, exporters of textiles and clothing. It is the only international organisation exclusively of developing countries; managed and financed solely by them.

International trade in textiles was managed since 1961 under a separate set of rules that deviated from the basic principles of the GATT. These rules were embodied in the MFA which remained in force from 1974 to 1994. During the course of its operation, disciplines contained in the MFA broke down and the balance of rights and obligations distorted. Developing countries, facing the brunt of MFA restrictions, met at Bogota, Colombia, in 1980 and decided to work together to secure the return of textile trade to the normal rules of the GATT. They launched a Programme of Cooperation to achieve this end. Later, it was decided to institutionalise this Programme. Thus the ITCB came into existence in 1984.

ITCB objectives are to achieve the elimination of discrimination and protectionism faced by developing countries in the textile sector, to seek the full application of GATT rules and principles to world trade in textiles, to uphold the rights of its members, and to assist them in their effective participation in the relevant international fora.

ITCB participated in the Uruguay Round and negotiated the Agreement on Textiles and Clothing. It regularly examines the problems arising in the textile sector with a view to evolving common positions among developing countries. Presently, its main functions are to oversee the implementation of the Agreement on Textiles and Clothing, to maintain its integrity, and to provide technical assistance to its members.

ITCB members are Argentina, Bangladesh, Brazil, China, Colombia, Costa Rica, Democratic People's Republic of Korea, Egypt, El Salvador, Honduras, Hong Kong China, India, Indonesia, Republic of Korea, Macau, Maldives, Mexico, Pakistan, Paraguay, Peru, Sri Lanka, Thailand, and Uruguay.

Cuba, Guatemala, Mauritius and Singapore have observer status at the ITCB.

International organisations i.e., UNCTAD, WTO, the International Trade Centre and the Woolmark Company as well as national organisations namely, Bangladesh Garment Manufacturers and Exporters Association, China Chamber of Commerce for Import and Export of Textiles, the Cotton Textile Export Promotion Council of India and the Indian Cotton Mills' Federation are also observers.

In pursuit of its objectives, the ITCB closely collaborates with associations of the private sector in Europe and the US, as well as with other international non-governmental organisations. It has observer status with ILO, UNCTAD and WTO.

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CR/XXIX/PAK/13
15 July 1999

INTERNATIONAL TEXTILES AND CLOTHING BUREAU

Council of Representatives
XXIX Session
Bhurban, Pakistan
12-15 July 1999

BHURBAN COMMUNIQUE

The ITCB Council of Representatives, meeting at its 29th session, expressed its concern that the Agreement on Textiles and Clothing (ATC) of the WTO continues to be used by importing developed countries as a means of maintaining and diversifying restrictions in textile trade, rather than as a set of rules governing the transition towards full integration of the textiles and clothing sector into GATT 1994 by the end of the year 2004.

The Council evaluated the implementation of the ATC nearing its half-way mark and noted the lack of commercially meaningful progress towards the elimination of restrictions and the consequent failure to achieve a progressive process of integration as set out in the Agreement. In this regard, the Council reiterated that the ATC shall be fully implemented well within the agreed timeframe. To achieve this outcome, the process of integration must be improved. The Council expressed concern at attempts to condition the implementation of already agreed commitments on additional sectoral access by developing countries.

The Council decided therefore to submit its views to the General Council of the WTO in the context of discussions relating to the evaluation of implementation of WTO agreements. On this basis, it also decided to develop and later submit to the WTO General Council suggestions on how importing developed countries could improve the process and the quality of implementation of the ATC. In the context of preparations for the third Ministerial Conference, it further decided to continue consultations in Geneva with a view to ascertaining the most appropriate actions that may be taken in the future.

The Council discussed, in depth, such issues as anti-dumping, rules of origin and tariffs applied by developed countries in the context of trade in textiles and clothing. In this connection, the Council reiterated the continuing concerns it highlighted in the San Salvador and Maldives Communiqués. The Council deplored once again the protectionist resort to anti-dumping actions by a major developed importer, especially against exports of already restrained products. It renewed its concern at the past abuse of transitional safeguard actions by another major developed importing country, particularly in light of the recent transitional safeguard action taken by that country which was found to be unjustified by the TMB. It also stressed that arbitrary changes in rules of origin and administrative procedures have substantially disrupted trade and impeded full utilization of access under the ATC.

The presentations by and discussions with representatives of importers' associations from Europe, the United States and Japan proved extremely valuable in understanding issues relevant to full and faithful implementation of the ATC. The Council encouraged them to continue their efforts to bring before public opinion in their countries the benefits of free trade, particularly in the area of textiles and clothing.

Useful exchanges also resulted from the presentations made by representatives of the WTO, UNCTAD and the ITC whose presence was highly appreciated.

The Council welcomed the presence of representatives from the DPR of Korea and Guatemala since these countries are in the process of finalizing their internal processes to become full members of ITCB. It also appreciated the presence of delegations from Vietnam and Mauritius and expressed the hope that these countries will also become full members in the near future.

The Council granted observer status to the China Chamber of Commerce for Import and Export of Textiles and to the Bangladesh Garment Manufacturers and Exporters Association thus expanding the participation of the private sector in the Bureau's activities.

The Council of Representatives of ITCB expressed its profound gratitude to the Government of Pakistan for hosting its 29th Session in Bhurban from 12 to 15 July 1999. H.E. Muhammed Ishaq Dar, Minister for Finance and Commerce of Pakistan, inaugurated the session. Mr. Stuart Harbinson of Hong Kong, China was elected Chairman and Mr. Nasim Qureshi of Pakistan and Mr. William Ehlers of Uruguay were elected as Vice-Chairmen of the session.

CR/XXIX/PAK/8
2 July 1999

INTERNATIONAL TEXTILES AND CLOTHING BUREAU

Council of Representatives
XXIX Session
Bhurban, Pakistan
12 –15 July 1999

Rules of Origin Affecting Trade in Textiles

A brief description of two developments with respect to rules of origin, having a bearing on trade in textiles, is being presented in this paper to facilitate discussion at the Council Session.

THE US RULES OF ORIGIN

As part of its legislation implementing the results of the Uruguay Round (The Uruguay Round Agreements Act -- URAA), the US substantially altered its rules to determine the origin of textile and clothing products for purposes of its customs laws and the administration of quantitative restrictions. The most significant alterations resulted in changing a long-standing US practice with regard to the meaning of "substantial transformation" for conferring origin on particular textile and clothing products.

The New US Rules:

Before these changes, substantial transformation had generally been considered to take place if manufacturing or processing in a foreign country resulted in a physical change in the product, and produced a new and different article of commerce. Contrary to that, the origin of textile and clothing products under URAA's approach is determined in accordance with the following concepts, applied in a hierarchical order:

1. General Rules

   A. Where the product is wholly obtained or produced.

   B. In the case of yarn, where the staple fibres are spun or continuous filaments is extruded.

   C. In the case of fabrics, where fabric making (weaving, knitting, etc.) takes place.

D. In the case of other textile and apparel products, where they are wholly assembled.

2. Special Rules

As an exception to 1:D above:

A. Origin in respect of articles falling under 16 HS headings/subheadings is determined where the constituent material (yarn, fabric) is made. The list of 16 product categories includes made-up articles such as quilted products, blankets, shawls, items of linen, curtains, tents and camping goods, badges and labels, etc.

B. Origin of articles made from knit-to-shape apparel parts (panels) is considered as the country in which these panels are knitted.

3. Multi-Country Rule

If a product is manufactured in more than one country and cannot be classified under the above general or special rules, its origin is determined by applying the following criteria, in a sequential order:

A. Where the most important assembly or manufacturing process occurs.

B. Where the last important assembly or manufacturing process occurs.

4. Specific Rules are designed to protect (i) the duty preference accorded to components of articles cut in the United States (the so-called "807" programme), and (ii) goods originating in Israel.

In order to give effect to the aforesaid rules, the US Customs issued implementing regulations defining these principles in their operational context.

Summary of the major changes:

The most significant alterations brought about by these changes in US Rules of Origin are:

- Under the old rule, the origin of fabric was determined either by where the fabric was formed or, if the fabric was subjected to dyeing plus printing (and two finishing operations), the origin was determined by where the fabric was so processed. The change eliminated these processes. Consequently, the origin of fabric under the revised rules is now determined by where the fabric is formed irrespective of whether it may have been dyed, printed and finished in a different country.

- For made-up articles of Chapter 63 (bed-linen, table-linen, tents, quilts, embroidered products, etc,) also, now the origin is determined by where the

constituent fabric is formed. This change also ignored all operations such as dyeing, printing, finishing of fabrics as well as designing, cutting, sewing, embroidering, etc. that goes into the making of made-up articles.

- For garments, under the old rule, the origin depended upon whether it was a finished garment or a simple assembly item. For finished clothes, sewing was origin conferring. For assembly items, the place of cutting to shape was the country of origin. This recognized multi-country processing which has been so much in vogue in today's globalization. The new rules confer origin with reference to where the most important assembly operation is undertaken: a vague standard!

The Relationship of US Changes with WTO Provisions:

The changes in rules of origin explained above were effected by the United States **after** the conclusion of the Uruguay Round. Therefore the Agreement on Textiles and Clothing (ATC) and the Agreement on Rules of Origin (ARO) bear close relationship to these changes.

The ATC: Article 4:2 of the ATC provided that changes in rules should not: upset the balance of rights and obligations between the Members concerned; adversely affect the access available to a Member; impede the full utilisation of such access; or disrupt trade under the ATC.

The Agreement on Rules of Origin (ARO): The Agreement on Rules of Origin likewise provided that until the work programme for the harmonisation of rules of origin under the Agreement is completed, Members shall ensure, among other things, that their rules of origin are not used as instruments to pursue trade objectives directly or indirectly, and that rules of origin shall not create restrictive, distorting, or disruptive effects on international trade.

The Issue of Equitable Adjustments:

In the context of the provision of Article 4:4 of the ATC, stipulating consultations with a view to reaching mutually acceptable solutions regarding appropriate and equitable adjustments, the US offered to negotiate compensatory adjustments in trade that may have been adversely affected. However only a handful of exporting countries managed to receive such compensatory adjustments because the US put the onus of demonstrating any adverse effects on the exporting countries.

The EU-US Dispute:

On its part, the EU Commission invoked consultations with the United States about these changes pursuant to the Dispute Settlement Understanding of the WTO. In addition to violation of the ATC and the Agreement on Rules of Origin, the EU contended that the changes violated US obligation as to national treatment under the Agreement on Technical Barriers to Trade (TBT Agreement). The TBT Agreement requires WTO Members to ensure that, in respect of technical regulations, imported

products must be accorded the same treatment as to domestic products. The EU considered that the requirements on country of origin **marking** were in the nature of technical regulations as defined in Annex 1 to the TBT Agreement and that therefore the changes contravened the national treatment provision of that Agreement as well as Article III (national treatment) of GATT 1994.

Following the EU challenge, a mutually agreed solution was reached between the two in July 1997. The US agreed to restore the previous rules in respect of certain products. However, since the changes had been made pursuant to a legislative Act, the US agreed to introduce a draft bill in the Congress within one month from the scheduled completion of the harmonized work programme under the Agreement on Rules of Origin, i.e., by 20 August 1998. The bill was introduced in the Senate accordingly. However the EU reacted strongly against the modifications as proposed.

In a nutshell, the EU alleged that the proposed changes were limited to certain fabrics and silk accessories, whereas the understanding between the two was also to cover all flat goods (i.e. bed-linen, table-linen, curtains, quilts and other articles of HS Chapter 63). The EU further asserted that the proposed bill did not cover blended fabrics.

The EU-US dispute still remains un-resolved. According to indications, the US has since agreed to accept reverting to the previous rules with respect to flat goods also, but only in so far as these may be made of man-made fibres and silk. In other words, first, it would restore the "printing, plus dyeing, plus two finishing operations" rule of origin for all fabrics other than wool. Second, it would restore the "printing, plus dyeing, plus two finishing operations" rule of origin for bed linens, comforters, curtains (and other such HS Chapter 63 and Chapter 95 goods), shawls and scarves made of man-made fibre, vegetable fibre other than cotton, and silk. Excluded from this rule of origin would be goods classified as cotton, cotton blends or wool. Blends including cotton in the amount of 16% or more by weight would be considered a cotton blend and therefore would be outside the "printed, plus dyeing, plus two finishing operations" rule.

HARMONIZATION OF RULES OF ORIGIN

In addition to the changes in the US rules of origin as described above, the second pertinent issue derives from the on-going discussions under the harmonized work programme pursuant to the Uruguay Round Agreement on Rules of Origin.

The Purpose and Objectives of Harmonised Origin Rules

It may be recalled that the central purpose of the Agreement on Rules of Origin is to harmonise the origin rules on the basis of the following principles:

- They should be clear and predictable, and their application should facilitate the flow of international trade.

- They should not create restrictive, distorting or disruptive effects on trade.

- They should be coherent, and capable of being administered in a consistent and uniform manner.

- They should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out.

Perhaps, most significantly, the Agreement provides that the harmonised rules of origin, after they have been established and agreed, shall be applied ***"equally for all purposes"*** set out in Article 1 of the Agreement, namely, the most-favoured-nation treatment, the imposition of anti-dumping and countervailing duties, quantitative restrictions, safeguard measures, and origin marking requirements, etc.

The Agreement on Rules of Origin provided for a work programme for completion of the harmonisation exercise within three years of its initiation. The Agreement also provides that the WTO's Ministerial Conference shall establish a time-frame for the entry into force of the harmonised rules of origin.

Discussions under Harmonised Work Programme

During discussions under the Technical Committee on Rules of Origin established in the World Customs Organization and the WTO Committee on Rules of Origin, it has not yet been possible to finalize the rules with respect to textile and clothing products. A number of different proposals have been presented by various WTO Members. Some of these proposals could have a bearing for access under the ATC and for effective implementation of its provisions. This has given rise to suggestions by certain participants for an in-depth analysis of various proposals for trade in the future and, especially, for rights and obligations of WTO Members under various agreements.

Implication of Some Proposals:

Making of textile and clothing products involves a number of processing operations such as dyeing, printing, finishing, designing, cutting, sewing, embroidering, assembling and other making-up.

Some proposals seek to consider each one of such processes as origin conferring while others do not.

It has been suggested that if some processing operations are not recognized as origin conferring, it may have adverse effect for exporting countries with respect to their rights under the ATC and their exports to third countries. It has thus been suggested that it may be important to assess the implications.

ITCB Secretariat, on its part, presented its analysis of such implications in the past, including in the documents presented at the Council Session in San Salvador in 1997 (please see documents CR/XXV/SLV/6, IC/W/150, IC/W/156, IC/W/157). In general, the analysis showed that if harmonized origin rules excluded certain processing operations as origin conferring, these may have adverse implications for the implementation of a number of provisions of the ATC. Such provisions include those with respect to quota access under Article 2; administration of quotas by exporting countries under Article 4; new restrictions pursuant to the safeguard mechanism under Article 6; circumvention of quotas – Article 5; and integration process of the ATC in general. It was also shown that similar implications could occur with respect to possible quantitative restrictions under the Agreement on Safeguards, as well as with respect to anti-dumping and counter-veiling duty measures and origin marking requirements.

Closing Remarks

As indicated earlier, this paper has been designed to present a brief account of pertinent developments having a bearing on trade in textiles under the ATC. The Council may like to review and discuss these developments, as deemed appropriate.

INTERNATIONAL TEXTILES AND CLOTHING BUREAU

RULES OF ORIGIN
Harmonization Work Programme

The forthcoming session of World Customs Organisation's Technical Committee on Rules of Origin (TCRO) is scheduled to consider the proposals on textiles and clothing chapters during its meetings on 15-18 September 1997. In this connection, the 10th Informal Coordination meeting of the ITCB held on 29 July 1997 had decided that the Secretariat may develop analytical inputs for consideration after the summer break. This paper has accordingly been prepared to facilitate examination of certain important issues emerging out of a number of proposals presented before the TCRO.

A general appraisal of the implications of harmonization proposals was presented in Council document CR/XXV/SLV/6 dated 20 May 1997. In a further document dated 24 July (IC/W/156), an effort was made to present a tabulation of certain major processes involved in manufacturing textiles and clothing products. Members may wish to consider the present paper in conjunction with the two previous documents.

Basic Principle:

It may be useful to recall that according to the Uruguay Round Agreement on Rules of Origin, the harmonized rules are to be developed in accordance with the fundamental principle that origin should be determined either on the basis of the country where a particular product is wholly obtained or, where more than one country is involved in its production, the country where the *last substantial transformation* has been carried out. The TCRO is required to consider and reflect the criterion of substantial transformation through changes in *headings* or *subheadings* of the Harmonized System (HS) of classification. Where exclusive use of the nomenclatures of HS headings or sub-headings may not be sufficient to reflect substantial transformation, the TCRO is to elaborate supplementary criteria.

Different Proposals:

Where a particular product is wholly made in one country, the determination of its origin may not present any problem. However, difficulties are encountered in those products whose production involves more than one country. Presently different countries have different rules to determine the origin of such products. These differences in

national systems are naturally reflected in their respective proposals submitted before the TCRO. The proposals use changes in HS headings or sub-headings to express their respective views in regard to whether processing in an intermediary third country can be considered to involve substantial transformation.

Complexity of the Issue:

The HS code classifies textiles and clothing products under 14 chapters (chapters 50-63). Each chapter contains a large number of headings and sub-headings. Consequently, textiles and clothing products are spread over about 150 headings and more than 800 sub-headings. As new products are invented or trade in existing products becomes significant, the HS is updated to create further sub-headings. As such, expressing the harmonized rules of origin through the HS involves a complex technical exercise. The results of the exercise can have potentially important consequences for trade. It is therefore important to analyse the various proposals with a view to assessing their impact.

Focus of Present Paper:

In the short span of a few pages, it is well nigh impossible to examine and analyse all the proposals. Nor is it feasible to assess the implications of these proposals for all trade policy instruments for which the harmonized rules will be equally applicable.

This paper is therefore designed to bring out the implications of the major proposals for three main groups of textile and clothing products. The paper is confined to assessing such implications for (I) utilization and administration of quotas, and (ii) the integration process under the ATC.

Implications of Harmonization Proposals:

It bears repeating that an examination of the proposals submitted before the TCRO reveals that there is a wide divergence of views in regard to the precise application of the concept of "substantial transformation". These divergences find their reflection in respect of a range of products in the textile and clothing chapters. An essential reason for these divergences is the consideration as to which process or processes in the manufacture of particular products are considered as involving substantial transformation and, thereby, origin conferring. Therefore it is useful to focus on the proposals by reference to the main processes which are the basis for differences in views.

In what follows, the implications of the main proposals with regard to three major product groups, i.e., fabrics, made-up articles and clothing, are analysed.

Fabrics:

Woven fabrics are classified mainly under chapters 50 to 55 of the HS. Each chapter deals with one or more textile materials, alone or mixed. Thus fabrics of various textile materials are classified under those chapters as follows: Chapter 50 (silk), 51 (wool and animal hair), 52 (cotton), 53 (other vegetable textile fibres, i.e. flax, true hemp, jute, sisal, ramie, etc.), 54 (man-made filaments), 55 (man-made staple fibres).

Knitted and crocheted fabrics are however classified under chapter 60 of the HS.

In general, there are separate *sub-headings* for (a) unbleached, (b) bleached, © dyed, (d) printed fabrics, and (e) fabrics of yarns of different colours in chapters 52, 54 and 55. The classification of fabrics under chapters 51 and 53 is not divided by these processes.

If there were to be agreement to consider the main processes of bleaching, dyeing or printing as substantial transformation, the harmonized rule could be expressed as change in tariff sub-heading or, in cases where there is no distinct classification to reflect these processes in certain chapters, by splitting the sub-headings. It is noticed however that there is an array of opinions with respect to these processes. Thus:

(I) Some countries consider that each of the main processes, namely, bleaching, dyeing, or printing, involves substantial transformation and therefore should be considered as origin conferring. As such, for these countries, the rule should be expressed as change in tariff sub-heading or, as the case may be, split heading or split sub-heading.

(ii) The second group of countries considers that dyeing or printing alone cannot be considered as substantial transformation, but that dyeing or printing accompanied by preparatory or finishing processes should be considered as substantial transformation.

(iii) The third group considers that dyeing or printing whether alone or in combination with other preparatory or finishing operations cannot be considered as substantial transformation, and that the change in heading should be rule.

Taking the example of cotton fabrics under heading 5208, the expression of the rule under the three main proposals could be summarised as follows:

Heading	Sub-heading	Description	Proposed Rule
52.08	5208.11-19	Unbleached fabrics	1. Change in sub-heading
	5208.21-29	Bleached fabrics	2. Change in sub-heading provided accompanied by preparatory or finishing operations
	5208.31-39	Dyed fabrics	
	5208.51-59	Printed fabrics	3. Change in heading

Implications for Quota Utilization / Administration:

It is noticed that the EC and US textile category systems contain the following categories for fabrics:

EC category 2 (cotton fabrics)
category 3 (MMF fabrics)

Both these categories have sub-categories designated as:
2 - A other than bleached or unbleached
3 - A other than bleached or unbleached

In other words, this sub-categorisation distinguishes unbleached/bleached fabrics from dyed and printed fabrics.

USA Categories 220 (fabrics of special weave), 226 (Cheese cloth, batiste, lawn, voile), 313 (sheeting), 314 (poplin and broadcloth), 315 (print cloth), 317 (twills), 611 (Woven fabric of artificial staple fibres), 613 (sheeting), 614 (poplin and broadcloth), 615 (print cloth), 617 (twills), etc.

The US category system however is based on fibre content and differences in the nature (i.e. constructions) of the fabrics.

Assuming that country 'A' exports unbleached fabrics to country 'B', where these are dyed and/or printed and then exported to country 'C' which maintains quota against imports of fabrics. If the origin rule is harmonized on the basis of the third proposal (i.e., dyeing and/or printing are not considered to be substantial transformation and therefore not origin-conferring), country 'C' would debit the imports from country 'B' to the quota of country 'A', in which case country 'A's export to country 'B' would effectively come

under quota. Additionally, the situation would create problems for the administration of quotas by country 'A'.

If the origin rule is harmonized on the basis of the second proposal (i.e. that dyeing or printing can be considered as substantial transformation provided it is accompanied by preparatory or finishing processes), it would appear to present the difficulty of developing a complete and exhaustive list of preparatory or finishing operations and may leave the rule subject to varying interpretations.

Implications for Integration Process;

Alternatively, country 'C' may seek to impose quota on import of fabrics from country 'B' also, whereas, in terms of Article 2:4 of the ATC, "no new restrictions .... shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions." In other words, new quotas may be imposed only if damage to domestic industry were demonstrated and after going through the procedures of Article 6 of the ATC. The situation may thus create problems for effective implementation of the ATC.

Likewise, assuming a country maintaining restrictions on imports of fabrics under the ATC integrates tariff lines relating to printed and finished fabrics in the third stage of integration, but chooses not to do so in the case of HS lines relating to unbleached or bleached fabrics. Thus, if the rule of origin is harmonized on the basis of restrictive proposals, it may create complications for the integration process: because even after having integrated these products, the importing country may continue to debit imports of these integrated products against quotas for products not yet integrated.

Made-ups:

Made-up textile articles are essentially classified under chapter 63 of the HS and include a range of products such as (I) blankets, (ii) bed, table, toilet and kitchen linen, (iii) curtains, (iv) articles of furnishing such as bedspreads, (v) sacks and bags, (vi) tents, and camping goods, (vii) floor/dish cloths, dusters, etc.

Each one of these groups of products is classified under a distinct HS heading. Within various headings, the articles covered are classified in accordance with their fibre content. Thus, e.g. bed linen is classified as follows:

Heading	Subheading	Description
6302		Bed, table, toilet and kitchen linen
	6302.10	- Bed linen, knitted or crocheted
		- Other bed linen, printed:
	6302.21	-- Of cotton
	6302.22	-- Of man-made fibres
	6302.29	-- Of other textile materials

(i) According to one set of proposals before the TCRO, the making of these articles from fabrics should not be considered as substantial transformation, and that therefore their origin should be where the fabric was made. Consequently they would appear to propose change of chapter, or tariff heading except if the change results from certain specified fabric headings.

(ii) The second set of proposals considers that certain made-up articles involve substantial transformation while others do not. Consequently differing rules are proposed for different products, involving the creation of split headings.

(iii) The third proposal considers that making of these articles involves substantial transformation because it results in new and different products and that therefore change in tariff heading should be the rule for these products.

Implications for Quota Administration/Utilization:

The EU and US category systems provide for a number of categories each for products in chapter 63. In the case of the EC, these include categories 9, 20, 39, 66, 67 and 118. In the case of US, these include categories 360, 361, 362, 369, 666, and 899. A large number of countries are under quota restrictions in a majority of these categories.

As in the case of fabrics, it is apparent that if the origin rule is harmonized on the basis of the first set of proposals explained above, it has the potential of disrupting the utilization and administration of quotas for these products. It may also result in curtailing access provided for under the ATC. The second proposal would also produce similar problems for products for which the origin is proposed from where the fabric was derived.

Implications for the Integration Process:

Made-up articles classified under chapter 63 of the HS account for substantial percentages of total imports both in the US and the EU. The integration programmes of the US for the first two stages included items from made-up categories amounting to 4.27% of total imports in 1990. Since the US programmes for all the stages were published at the start of the integration process, it is also known that its third stage integration programme may include made-up articles accounting for 5.91% of 1990 imports. Some of these items are under quota restriction. It is likely that EC's third stage integration may also include some of these items.

Assuming that the origin rule is harmonized on the basis of the first proposal, i.e., that the origin of these articles is determined as where the component materials were woven. In that case, even after integrating these made-up articles, a country could be debiting imports of these products against fabric quotas of the exporting countries concerned. This situation would appear to amount to treating integrated percentages as though these had not actually been integrated, thus creating unforseen difficulties for the integration process. Similar consequences could be anticipated if the rule were harmonized on the basis of the second proposal.

Clothing items:

Apparel articles are classified under chapters 61 and 62 of the HS. While chapter 61 includes knitted apparel articles, Chapter 62 covers apparel of woven fabrics. Unfinished or incomplete apparel articles are also classified under these chapters in the headings corresponding to finished articles, provided that the unfinished and incomplete articles have the essential character of the finished articles. However, parts of garments and of clothing accessories are classified under distinct headings, i.e., 61.17 or 62.17.

The main groups of apparel are classified under separate HS headings. Thus there are different headings for (I) men's or boys' overcoats, (ii) women's or girls' overcoats, (iii) men's and boys' suits, (iv) women's or girls' suits, (v) men's and boys' shirts, (iv) women's or girls' shirts, and so on. Each one of these headings is generally divided into sub-headings in accordance with the fibre content of the garment. Thus, e.g. men's and boys' shirts (woven) are classified as follows:

Heading	Subheading	Description
6205		Men's and boys' shirts
	6205.10	- Of wool or fine animal hair

6205.20	- Of cotton
6205.30	- Of man-made fibres
6205.90	- Of other textile materials

With respect to woven garments, three main proposals have been tabled in the TCRO:

(I) According to one proposal, change to various apparel headings, including change within the same headings, should be the rule provided that the change results from assembly of all major parts of a garment. Cutting of fabric into garment parts should also be considered substantial transformation.

(ii) The second proposal indicates that full or substantial assembly of apparels (including assembly of parts classified under the same heading) should be considered as substantial transformation provided that the parts have the essential character of the apparel. Consequently change in chapter or change in tariff heading from the parts heading in the same chapter should be the rule.

(iii) A third proposal considers assembly of parts into apparel as origin conferring provided it is accompanied by cutting or other operations such as complete making up. Therefore for finished or complete garment articles, change in heading is proposed to be the rule; for unfinished or incomplete garment articles, change in chapter is the proposed rule.

Implications for Quota Utilization/Administration:

Before the US changed its origin rules for textile and clothing products from July 1996, its rule for garments was akin to the proposal at (I) above. It considered that substantial transformation took place if manufacturing or processing in a foreign country resulted in a physical change in the product and produced a new and different article of commerce. Therefore, besides assembly, it also deemed cutting of fabric into garments to confer origin. The rule facilitated multi-country processing and thus promoted better utilization of quotas.

An essential difference between the first two proposals is that while the first deems cutting also to be origin conferring, the second does not. It may also leave some ambiguity if the concept of substantial assembly (as opposed to full assembly) is not

adequately defined.

The third proposal reflects practices followed in some other countries including the EC. Harmonization to this standard would seem likely to affect the utilization of quotas in the U.S.

Implication for the Integration Process:

It is possible that the harmonization of origin rule on the basis of either of the three main proposals may impact the utilization of quotas in one major market or the other. Consequently, it may promote or decelerate adjustment in the importing markets depending on whether the rule is harmonized with a particular proposal or the other.

Closing Remarks:

Unlike the other sectors, trade in textiles and clothing has been subject to a complex system of quantitative restrictions and has evolved on the basis of different rules of origin in different countries. Although various proposals before the TCRO reflect existing practices in various countries, harmonization to any particular practice or system may necessitate adjustment with respect to exports to the other markets.

In general, origin rules based on a liberal application of the concept of substantial transformation would appear to create little problems for the utilization and administration of quotas, or for the integration process under the ATC. If such an approach may not be possible, it is important to develop the harmonized rules in such a way as to minimise the disruptive effects for utilization and administration of quotas. It should also be ensured that effective implementation of the integration process under the ATC is not undermined.

INTERNATIONAL TEXTILES AND CLOTHING BUREAU

RULES OF ORIGIN

HARMONIZATION WORK PROGRAMME

ITCB Council of Representatives meeting at San Salvador in June 1997 reviewed pertinent developments relating to the harmonized work programme under the WTO Agreement on Rules of Origin. It recognised the importance of the programme and the need to closely follow the on-going work to ensure that its outcome is not detrimental to the interests of ITCB Members.

The Council decided to deepen ITCB's analysis of the various issues involved and to raise the possible difficulties for examination by the relevant WTO/WCO fora. It also agreed to coordinate ITCB's position and to request necessary technical assistance for its Members in the context of the application of harmonized rules of origin.

It may be recalled that the WTO Agreement on Rules of Origin provided for a work programme for completion of the harmonization exercise within three years of its initiation. Since the work programme was initiated in July 1995, it is due to be completed by July 1998.

The Technical Committee on Rules of Origin (TCRO) under the auspices of the World Customs Organization at Brussels began examination of the textiles chapters of the harmonized classification system in its meetings in December 1996 and February 1997, when it completed a first reading of the various proposals. Due to wide divergences in positions, almost the entire textiles section (with the exception of a very few items) was deferred for further examination in a second reading under the so-called Basket 2 review. This Basket 2 review, which was earlier planned to be taken up in the November Session of the Technical Committee, has since been advanced and will now be undertaken in the September Session of the TCRO. According to the draft time table circulated for the Session, four full days (15 - 18 September 1997) have been earmarked for the textiles chapters.

Another pertinent development bearing on the harmonization work programme has emerged from the recent understanding reached between the US and EU in the context of EU's complaint against US changes in textiles rules of origin applied with effect from July 1, 1996. According to that understanding, the US has, *inter alia*, agreed to propose legislative amendments to the Congress so as to revert to the pre-July 1996 rules of origin in respect of the products of concern to the EU. The timing and framework for these legislative amendments has been accepted by the two parties to be in the context of the implementation of results of the harmonization work programme. Accordingly, the US has agreed that the Administration will propose these changes to Congress not later than two months from July 20, 1998, i.e., after the conclusion of

negotiations on harmonization rules of origin.

Both sides have also agreed to consult on any other issues concerning textiles rules of origin with the intent of reaching mutually satisfactory solutions.

According to the Agreement on Rules of Origin, the harmonized rules are to be developed in accordance with the fundamental principle that origin should be determined either on the basis of the country where a particular good is wholly obtained or, where more than one country is involved in its production, the country where the last substantial transformation may have been carried out. The instrument to reflect the harmonized rules is through the harmonized classification system.

Several proposals of a technical nature had been tabled in the TCRO by the developed countries and some ITCB Members. The delegation of Hong Kong submitted a contribution on the problem of piece-knitted garments in the Harmonization Work Programme (IC/W/146). After a preliminary consideration of these proposals in an informal ITCB coordination meeting on 28 January 1997 it was concluded that the Secretariat should begin examination of the proposals and that the ITCB should seek observer status in the TCRO. It was also concluded that the results of ITCB's examination of the proposals should be considered by the meeting of informal coordination and, if necessary, by the summer Council, whereafter there would be the possibility of ventilating the Bureau's point of view (IC(97)/1).

At its meeting in February 1997, TCRO decided to grant observer status to the ITCB.

A general assessment of the implications of the harmonized rules of origin was presented by the Secretariat in the Council document CR/XXV/SLV/6, dated 20 May 1997.

Following the first reading of various proposals at the TCRO, the World Customs Organization Secretariat has issued two documents entitled the "Secretariats's List of Basket 2 Issues": one relating to chapters 50-55 and the other relating to chapters 56-63 of the harmonized system. These documents summarise the main issues emerging from various proposals.

It is apparent from the above documents that views differ in regard to the precise meaning of the concept of "substantial transformation". And these differences find their reflection in various proposals with respect to a range of products in the textiles and clothing chapters. An essential element of the exercise is the consideration as to which process or processes may be taken to determine transformation in an intermediary country as substantial to confer origin on the processed product with reference to that country. Thus, e.g., whether the following processes should be considered as origin conferring:

In the area of yarns and fabrics:

- Bleaching, dyeing, printing, etc., (taken individually or in combination) of yarns or fabrics
- Reeling of filaments form silk cocoons
- Degumming and finishing of woven fabric of silk waste
- Producing sewing thread from yarns
- Coating or impregnating of woven fabrics

In the area of made-ups:

- Producing articles of wadding from articles of 56.01
- Obtaining labels, badges and similar other articles from, e.g., fabrics
- Embroidering
- Producing quilted products from fabrics
- Manufacturing of fabrics into bed, table, toilet and kitchen linen, curtains, sacks and bags, tents and other camping goods, etc.

In the area of apparel:

- Assembly of apparel from parts or accessories
- Partial assembly of parts of apparel: which major or other parts should qualify as assembly
- Obtaining apparel products from knit- to- shape parts
- Production of diapers from existing fabric

The above listing does not represent a complete picture of the processes at issue. It however does signify the complexity of the harmonization exercise. The results of the harmonized work programme can have important implications for trade and ITCB Members' access under the ATC.

The informal coordination meeting scheduled to be held on 29 July 1997 is invited to consider various aspects of the harmonization exercise.

CR/XXV/SLV/6
20 May 1997

INTERNATIONAL TEXTILES AND CLOTHING BUREAU

Council of Representatives
XXV Session
San Salvador, El Salvador
10-13 June 1997

RULES OF ORIGIN AFFECTING TRADE IN TEXTILES AND CLOTHING

This paper seeks to address and examine the issue of rules of origin in the context of:

(i) changes implemented by the United States with effect from July 1996 for determining the origin of textile and clothing products, and

(ii) the work programme relating to harmonization of rules of origin currently in progress pursuant to the Uruguay Round Agreement on Rules of Origin.

As such, it does not concern itself with preferential rules of origin applied in the context of regional trade arrangements, GSP, etc.

US Rules of Origin

Over the years, rules to determine the origin of textile products have been the object of intense lobbying pressures in the United States due to the existence of quotas under the MFA and the perceived import sensitivity of these products. Such pressures have caused important modifications in these rules.

As part of its legislation implementing the results of the Uruguay Round (The Uruguay Round Agreements Act – URAA), too, the US substantially altered its origin rules for requirements to determine the origin of textile and clothing products for purposes of its customs laws and the administration of quantitative restrictions. The most significant change resulted in changing a long-standing US practice with regard to the meaning of "substantial transformation" for conferring origin on particular textile and clothing products.

New US Rules of Origin:

Hitherto, substantial transformation had generally been considered to take place if manufacturing or processing in a foreign country resulted in a physical change in the

product, and produced a new and different article. Contrary to that, the origin of textile and clothing products under URAA's approach is to be determined in accordance with the following concepts, applied in an hierarchical order:

1. General Rules

   A. Where the product is wholly obtained or produced.
   B. In the case of yarn, where the staple fibres are spun or continuous filament is extruded.
   C. In the case of fabrics, where fabric making (weaving, knitting, etc.) takes place.
   D. In the case of other textile and apparel products, where they are wholly assembled.

2. Special Rules

   As an exception to "D" above.-

   A. Origin in respect of articles falling under 16 HS headings/subheadings shall be determined where the constituent material (yarn, fabric) is made. The list of 16 product categories includes made-up articles such as quilted products, blankets, shawls, items of linen, curtains, tents and camping goods, badges and labels, etc.

   B. Origin of articles made from knit-to-shape apparel parts shall be considered as the country in which these are knitted.

3. Multi-Country Rule

   If a product is manufactured in more than one country and cannot be classified under the above general or special rules, its origin will be determined by applying the following criteria, in a sequential order:

   A: Where the most important assembly or manufacturing process occurs.

   B. Where the last important assembly or manufacturing process occurs.

4. Specific Rules are designed to protect (i) the duty preference accorded to components of articles cut in the United States (the so-called "807" programme), and (ii) goods originating in Israel.

In order to give effect to the aforesaid rules, the US Customs has issued implementing regulations which define these principles in their operational context.

Summary of major changes:

The most significant alterations brought about by these changes in US Rules of Origin are:

(i) In the case of yarns and fabrics, such processes as bleaching, dyeing, printing, finishing, etc., are not considered to involve transformation, either individually or together, substantial enough to confer origin with respect to the country where these processes may be carried out. In other words, origin of yarns or fabrics is considered where grey products are made, irrespective of any further processing operations.

(ii) Likewise, in the case of 16 product categories which include made-up articles, transformation subsequent to the manufacturing of fabrics is not deemed to involve substantial transformation.

(iii) In the case of garments, origin was conferred by where cutting of the fabric took place. This was based on a long-standing US approach that the process resulted in a physical change in the fabric – a change from material which could be used for a number of different purposes to a garment part that was dedicated to a specific use in a specific type of garment. Under the new rules, origin will be based on where a garment product is wholly assembled.

(iv) Another important change has been effected in respect of garment products made from knit-to-shape panels. Origin of knitted garments made from knit-to-shape panels will now be on the basis where these panels are knitted.

Objectives for change:

According to the US, in discussing these changes, "the President's statement of Administrative Action and the relevant Senate report stated that (the new rules) would more accurately reflect where the most significant production activity occurs, would help combat transshipment and other circumvention of textile and apparel quotas, would bring the US rules of origin in line with rules employed by other major textile and apparel importing countries and by US trading partners, and would advance the goal of harmonizing international rules of origin set out in the WTO Agreement on Rules of Origin" [1]

In the process leading up to the passage of the URAA, a lobby group had stated that the US textile and apparel manufacturers, along with the Administration, supported

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[1] See US Department of Treasury, Customs Service, Rules of Origin for Textile and Apparel Products, Federal Register, Vol 60, No. 171, dated September 5, 1995.

the change in rules of origin because it was necessary for the industry and its workers to have a meaningful, 10 year adjustment period to prepare for the phase-out of the MFA.

The Relationship of above changes with WTO provisions:

The changes in rules of origin explained above came to be effected by the United States after the conclusion of the Uruguay Round. Therefore the agreements on Textiles and Clothing (ATC) and Rules of Origin (ARO) bear close relationship to these changes.

The ATC: Article 4:2 of the ATC provided that changes in rules should not: upset the balance of rights and obligations between the Members concerned; adversely affect the access available to a Member; impede the full utilization of such access; or disrupt trade under the ATC.

Article 4:4 of the ATC further provided that when changes in rules "are necessary", the country initiating change(s) must hold consultations with the affected Members with a view to reaching mutually acceptable solutions regarding appropriate and equitable adjustments.

It may be seen from the above that while the ATC's approach to changes in rules of origin was not prohibitive, it restricted the scope of such changes to only when they may be "necessary". The ATC did not delimit the scope of application of "necessity", yet it may be pertinent to recall that the term "necessary" has, in a number of cases, been interpreted in the GATT, and it has been held that.-

> "A contracting party cannot justify a measure inconsistent with another GATT provision as "necessary" in terms of Article XX(d) if an alternative measure which it could reasonably be expected to employ and which is not inconsistent with other GATT provisions is available to it. By the same token, in cases where a measure consistent with other GATT provisions is not reasonably available, a contracting party is bound to use, among the measures reasonably available to it, that which entails the least degree of inconsistency with other GATT provisions. [2]

The same reasoning was adopted by the 1990 *Thai Cigarette* panel in examining a measure under Article XX(b). That panel saw no reason not to adopt the same interpretation of "necessity" under Article XX(b) as under Article XX(d), stating that.-

> "The import restrictions imposed by Thailand could be considered to be "necessary" in terms of Article XX(b) only if there were no alternative measures consistent with the General Agreement, or less inconsistent with

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[2] "United States - Section 337 of the Tariff Act of 1930", BISD 36S/345, para. 5.26 (adopted on 7 November 1989)

it, which Thailand could reasonably be expected to employ to achieve its health policy objectives".[3]

The explanation advanced by the US to justify the changes would appear to be at odds with the above reasoning in view of the availability of alterative measures under the anti-circumvention provisions of Article 5 of the ATC, and the harmonization work programme of the Agreement on Rules of Origin. The US changes would also seem to be contrary to another important GATT principle, i.e., that exporting Members can reasonably expect that market access would not be frustrated by importing Members.

The Agreement on Rules of Origin (ARO): The Agreement on Rules of Origin likewise provided that until the work programme for the harmonization of rules of origin under the Agreement is completed, Members shall ensure, among other things, that their rules of origin are not used as instruments to pursue trade objectives directly or indirectly, and that rules of origin shall not create restrictive, distorting, or disruptive effects on international trade.[4]

The Issue of Equitable Adjustments: In the context of the provision of Article 4:4 of the ATC, stipulating consultations with a view to reaching mutually acceptable solutions regarding appropriate and equitable adjustments, the US is reported to have approached a number of WTO Members for bilateral consultations. Agreements are understood to have been reached in a few cases.

During the consultative process, the US is stated to insist that the exporting Member demonstrate the adverse effect to its trade, which is often difficult on the part of developing countries owing to a number of difficulties. Firstly, the changes have been in effect for less than a year and the precise trade effects cannot be assessed in such a short span of time. Secondly, the developing countries are generally not in a position to marshal resources necessary for calculating the adverse effect. In the event, the agreements concluded so far are reported to have resulted in (a) the creation of new HS sub-headings, trade under which will be excluded from the coverage of the relevant category for the Member concerned; (b) some adjustments in quotas including even reductions in access in certain cases. It is also understood that some of the agreements are designed to cover a limited period of one or two years only, and that these agreements do not necessarily specify as having been concluded pursuant to Article 4:4 of the ATC.

Until the writing of this paper, the TMB had not reviewed the conformity of these agreements with the provisions of the ATC. The problem has also not been raised by any Member before either the TMB or the Dispute Settlement Body. It is however widely reported that the European Union is still in the process of consultations with the US due

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[3] "Thailand - Restrictions on Importation of and International Taxes on Cigarettes", BISD 37S/200, para. 75 (adopted on 7 November 1990).

[4] See Article 2(b) and 2(c) of the Agreement on Rules of Origin

to the disruption of its trade especially in the area of fabrics, and has threatened to invoke the dispute settlement mechanism of the WTO unless a satisfactory adjustment is effected in these rules.

Harmonization of Rules of Origin

It is well known that, over the years, rules of origin had sometimes been employed by countries to achieve trade policy objectives. At times, changes had been effected in response to protectionist demands and had been targeted at particular sectors. Besides creating uncertainty and unpredictability for trade, the situation often resulted in great ambiguity in these rules.

The Purpose and Objectives of Harmonized Origin Rules

The central purpose of the Agreement on Rules of Origin, *therefore*, was/is to harmonize these rules on the basis of the following principles:

- they should be clear and predictable, and their application should facilitate the flow of international trade.

- they should not create restrictive, distorting or disruptive effects on trade.

- they should be coherent, and capable of being administered in a consistent and uniform manner.

- they should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out.

Perhaps most significantly, the Agreement provided that the harmonized rules of origin, after they have been established and agreed, shall be applied ***"equally for all purposes"*** set out in Article 1 of the Agreement, namely, the most-favoured-nation treatment, the imposition of anti-dumping and countervailing duties, quantitative restrictions, safeguard measures, and origin marking requirements, etc.

The Rules of Origin Agreement provided for a work programme for completion of the harmonization exercise within three years of its initiation. Since the work programme was initiated in July 1995, it is expected to be completed by July 1998. It is being carried out by a Technical Committee under the auspices of the World Customs Organisation. The Agreement also provides that the WTO's Ministerial Conference shall establish a time-frame for the entry into force of the harmonized rules of origin.

Current state of the harmonization work programme:

As mentioned above, the harmonized rules are to be developed in accordance with the fundamental principle that origin should be determined either on the basis of the country where a particular good is wholly obtained or, where more than one country is involved in its production, the country where the last substantial transformation may have been carried out.

Since, views differ in regard to the precise meaning of the concept of "substantial transformation", a number of divergent proposals have therefore been tabled, including in respect of the origin of various textile and clothing products. Since the outcome of the harmonization exercise can have far-reaching implications for ITCB Member countries, it was decided at an ITCB coordination meeting to initiate an examination of the proposals (IC(97)/1). The following paragraphs are accordingly designed to attempt a preliminary analysis.

It may be stressed at the outset that this analysis is not intended to assess the relative merit of any particular proposal. Its purpose is only to promote appreciation of the practical difficulties that may result if origin rules are harmonized on the basis of a somewhat restrictive notion of substantial transformation.

Range of Proposals:

As mentioned above, a range of proposals have been tabled to determine the origin of various textile and clothing products. At one extreme, most intermediate processes are deemed to involve substantial transformation and hence origin conferring. At the other extreme, some very significant processes are not considered sufficient to be taken as substantial transformation. A particular reason behind these divergences may be the fact that while some deem substantial transformation to take place if the manufacturing process resulted in a physical change and produced a new and different product, others seem to consider and assess substantial transformation against a 'value addition' standard.

An example:

In any event, let us take a particular proposal and examine its implications in terms of various policy purposes, for which the harmonized origin rule would have to be applied equally.

1. Assuming country 'A' produces grey/unbleached fabrics of HS 52.09 and 55.14 and exports them to country 'B'.

2. Country 'B' processes the above fabrics and transforms them into tents and camping goods of HS 63.06. The processing operations in Country 'B' involve

bleaching, dyeing, printing, finishing, cutting, stitching and other ancillary operations.

3. Country 'B' exports the above tents of HS 63.06 to country 'C'.

At this stage of the harmonization exercise, some proposals would confer origin, in the above example, on country 'B' because it involves a change from tariff headings 52.09/55.14 to 63.06, and hence substantial transformation. Some other proposals however would not consider the processes undertaken in country 'B' as measuring up to their standard of substantial transformation and would therefore deem country 'A' (not country 'B') as the origin of the importedt tents.

Implications of Harmonized Rule of Origin:

Let us assume that the rule of origin for products of HS 63.06 (tents, camping goods, etc.) is harmonized on the basis of the second proposal, i.e., the one which would confer origin on tents as that of country 'A'.

Quantitative Restrictions: Supposing country 'C' imposes a quota for tents of HS 63.06, and sets the quota at 150 units for country 'A', and 50 units for country 'B'.

Country 'B' manufactures tents by importing grey fabrics of HS 52.09 and 55.14 from country 'A', whereas country 'A' manufactures the fabrics and fabricates tents from its own fabrics.

Again assuming that country 'B' exported its quota of 50 units of tents to country 'C' in the first quarter of the year. In the second quarter, country 'A' exports its quota of 150 units of tents to country 'C'. In terms of the harmonized rule of origin, country 'C' might allow only 100 units of tents to be imported from Country 'A' (and refuse entry to the remaining 50 units) because it could consider 50 units already imported from country 'B' as originating in country 'A'.

Countervailing Duty: Taking the same example again:

Country 'A' produces fabrics. It exports some of its fabric to country 'B', and uses the remaining fabric for manufacturing into tents and exporting these to country 'C'. Country 'B' also exports its tents (fabricated from fabric imported from 'A') to country 'C'.

Again assume that country 'C' applies a countervailing duty of 10% on tents originating in country 'A', after going through a due process because country 'A' has a subsidy scheme for exports.

Now, according to the harmonized rule of origin, when tents are imported into country 'C' from country 'B' (made from fabrics imported from country 'A'), country 'C' would consider these tents as originating in country 'A', and therefore liable to countervailing duty on these tents also.

It may be recalled that Article 11.8 of the Agreement on Subsidies and Countervailing Measures also reads as follows:

> "In cases where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the importing Member".

Antidumping Measures: The situation with regard to anti-dumping duties would also seem to be broadly similar to that in the case of countervailing duty action explained above.

Origin Marking: Again the same example : Suppose that country 'C' requires the tents to be affixed with marks of origin. According to the harmonized origin rule, even tents exported from country 'B' may be required to show the origin marking of country 'A'.

In short: The results of a harmonized rule of origin on the basis of a restrictive proposal, as in the above example, could result in a number of unforseen difficulties and distort investments and business. It may be clarified however that the foregoing analysis should not prejudice the need for clear and neutral origin rules for equal application for all purposes, the necessity for which has been established in the Agreement on Rules of Origin.

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> Note: In the foregoing examples, the issue of the determination of "like product" for purposes of safeguards, countervailing measures and anti-dumping duties would not seem to complicate the analysis, because, in all these cases, the product in question, i.e., tents, is similar and/or directly competitive. It also appears that if for these policy instruments the product is not deemed to be a "like product", the central objective of establishing a single rule of origin for application for all these purposes would seem likely to be undermined. . . . . .

Summing up:

In the interest of brevity, and of keeping the analysis as simple as possible, it is unnecessary to multiply it by further examples or elements. Members may however like to examine alternate scenarios. Yet, it appears that similar results can occur in a number

of other product areas in textiles and clothing where multi-country processing may be involved. It bears mentioning that manufacturing and assembly in more than one country has a long history and is grounded on the principle of competitive advantage. In today's age of globalization, such multi-country processing may in fact gain further ground. Therefore, in order to have a balanced and consistent set of harmonized rules, current and prospective realities of multi-country processing should be kept in view.

It is also apparent from the foregoing example that restrictive rules of origin can produce distortive effects for the countries concerned. Such distortions may have adverse consequences for investments, production and exports. It is therefore advisable that ITCB may like to carefully examine the various issues involved in the harmonization work programme, both in the context of the ARO and the ATC.

Moreover, being highly complex and technical in nature, the harmonized rules of origin would need to be adequately explained to government officials and the trading community in ITCB Member countries with a view to preparing for the implementation of the harmonized rules of origin.

Finally, as mentioned elsewhere in this paper, pursuant to Article 9:4 of the Agreement on Rules of Origin, WTO's Ministerial Conference shall establish the results of the harmonization work programme and a time-frame for entry into force of these results. Since the harmonization exercise has a relationship for access under the ATC, Members may wish to consider the appropriate time-frame for the application of harmonized rules to trade in textiles and clothing.

Concluding Remarks:

The changes in US Rules of Origin as well as the results of the harmonized work programme are likely to have long term implications for the trade interests of ITCB Members. They can create distortive effects for investments and exports and shift the patterns of trade.

ITCB Members may therefore like to consider appropriate steps to deepen their analysis and to coordinate their positions with respect to developments in the area of rules of origin affecting textile and clothing products.

ITCB may also consider raising the possible difficulties for examination by the WTO Committee on Rules of Origin in the context of its harmonization work programme.

ITCB may consider the appropriate time-frame for implementation of the harmonized rules of origin in respect of textiles and clothing.

ITCB may request necessary technical assistance for its Members in the context of the application of these rules.