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DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

October 31, 1984

The Honorable
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United States Customs Service
1301 Constitution Ave., N.W.
Washington, D.C. 20229

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Special

Attention: Regulations Control Branch
Room 2426

COMMENTS ON UNITED STATES CUSTOMS INTERIM REGULATIONS
AMENDMENTS RELATING TO TEXTILES AND TEXTILE PRODUCTS

INTRODUCTION

1. In several GATT meetings, the European Economic Community has expressed its serious concern regarding the new U.S. rules of origin and new administrative requirements for import procedures published on 3 August 1984 and the potentially harmful impact of these measures on trade in textiles and textile products. The Community joined other participants in these meetings in requesting withdrawal or postponement of the measures.

2. In its Note Verbale of 11 September 1984, the Community asked for bilateral consultations with regard to the Interim Regulations. These consultations took place on 20 - 22 September 1984, and were helpful in clarifying certain aspects, but they did not allay the main concerns of the Community, which have in the meantime been confirmed by the harmful effects already experienced.

3. The Community therefore requested a further delay in implementation in its Note Verbale of 3 October 1984, and urged the Government of the United States to reconsider the regulations in light of detailed written comments to be made by the Community at a later stage.

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4. The present document contains these detailed comments, which have been established on the basis of the Interim Regulations, the two sets of "questions and answers" issued by U.S. Customs Headquarters and the explanations furnished during the bilateral consultations. Obviously, account is taken of the Community's own rules and experience in the matter.

5. The comments concern the origin rules, the declarations which must accompany all importations of textiles or textile products and the problems of fraudulent circumvention or frustration of commercial policy measures in the field of textiles.

ORIGIN RULES

6. The origin definition in the new regulations for products which are not wholly manufactured lays down a double requirement. First, an article or material must have undergone a substantial manufacturing or processing operation, and second, the resulting article must be a new and different article of commerce with a name, character or use distinct from the material used.

7. A considerable number of criteria are listed for determining whether these conditions are fulfilled. The criteria set forth are not meant to be exhaustive. As the circumstances warrant, fewer than all, or additional factors may be considered determinative. Apart from four categories of operations which are considered minimal and therefore do not confer origin, no guidance is given in respect of manufacturing or processing operations which actually confer origin.

8. It is evident that this creates a very difficult situation for exporters and importers alike, who do not know in advance which origin to declare nor if the criteria will in practice be applied in the same way. Insofar as one of the stated objectives of the regulations is to avoid inconsistencies which may result from the lack of clear, definitive regulations on the subject, it is strongly suggested that the regulations should be amended to includ a list of operations which confer origin.

9. Such a list, which does not need to be exhaustive, may include the following operations, which according to the explanations given will confer origin in all circumstances:

- the making up of apparel from uncut and unmarked imported fabric;
- weaving of fabric from imported yarn;
- spinning of yarn from imported fibers;
- manufacture of carpet from imported yarn, backings and other materials.

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10. In the view of the Community, two other operations should be recognised as substantial operations which confer origin, and added to this list. These are:

- the dyeing of fabric, and

- the printing of fabric,

it being a necessary condition in either case that the processing is carried out on a grey fabric and includes both the operations necessary to prepare the fabric for dyeing or printing and the appropriate finishing or conditioning operations needed to make the finished article directly usable in the next stage of manufacturing process (or for sale).

11. In the Interim Regulations, dyeing and printing are included among finishing operations like showerproofing and superwashing and treated as such. In fact, the dyeing and printing processes represent important and complete manufacturing stages which in the Community, to a large extent, are carried out by independent and specialised producers. In terms of value added, this stage is normally more important than each of the preceding processes, e.g., spinning and weaving. For the products concerned in trade with the United States, the value added in the Community is normally at least 100% when compared with the cost of the grey fabric used (Annex I explains in more detail the processing involved).

12. Under Community rules, such processing confers origin, provided the conditions listed above are respected, because the processing involved is considered substantial and results in a new product with a different character and use. Under its rules as applied hitherto, the United States has recognised that origin was acquired for such products.

13. One of the other categories of operations which are considered as minor, and therefore fail to satisfy the substantiality requirement, is joining together by sewing, looping, linking or other means of attaching the otherwise completed component parts. The advice given in relation to the interpretation of this rule suggests that all joining together operations are covered, ranging from minor assembly operations (in particular of fully fashioned knitwear articles) which have more the character of being finishing operations to complete making-up of more complex clothing articles where the value added is considerable and reflects the substantial nature of the manufacturing or processing operations involved.

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14. According to the examples put forward, the country of origin may under certain circumstances be the country where the fabric was made. Obviously, this country of origin determination is misleading both for commercial policy and marking purposes and could lead to deflection of trade. It is suggested that this rule should be reconsidered to define in clearer terms the minor processing operations which it presumably was the intention to exclude.

DECLARATIONS

15. The regulations lay down that all importations of textiles or textile products must be accompanied by a declaration to be filed with the entry and prepared by the manufacturer, producer, exporter or importer. The purpose of the declaration is to ensure that appropriate facts are available and to assist otherwise in the identification of the country of origin to be declared in the entry documentation.

16. Two declarations are provided for. One declaration is to be used when the textiles or textile products concerned are wholly the growth, product or manufacture of a single foreign country. It is understood that this type of declaration may also be used when two stages of manufacture are carried out in one country. The other declaration must be used when more than one country has been involved in the manufacture. The importer may submit with the declarations a certification that he has been unable to obtain the information required. Release of the goods will in this case be delayed until a determination of the origin has been made to the satisfaction of Customs.

17. While the first declaration is relatively simple, the second declaration requires a very considerable amount of detailed information about the manufacture of the products concerned and the materials used. This information must include the sources and costs of the materials, direct production costs and a description of the manufacturing process. Information is also required with regard to non-textile materials and trimmings and accessories (e.g. underlining, buttons, tapes, zipfasteners, etc.).

18. Most of this information is highly sensitive from the commercial point of view and must be revealed to the U.S. Importer by the Exporter. It is administratively burdensome and costly to collect and may not be available if the exporter (producer) depends upon other manufacturers who have carried out part of the processing and who may refuse to supply, for example, detailed cost figures or information about the source of their materials. There is no guidance in the regulations with regard to which information may be left out without risking at least a delay in the release of the goods. Thus the possibility for

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an importer to certify that certain information is not available is of no particular help.

In the opinion of the Community, these documentation requirements are excessive and will hamper legitimate trade.

19. When establishing these requirements, the United States has not taken into account the rules to be found in Annex D2 of the International Convention on the Simplification and Harmonization of Customs Procedures (the Kyoto Convention of 1973), which has been accepted by both the United States and the Community 1/ and which reflects accepted international practices. As a general principle, under these rules the information to be given is limited to the country of origin. The Community has respected this principle when establishing its own rules on proof of origin, which apply to all imports of MFA textiles and textile products, including those coming from the United States.

20. The Community does not consider it acceptable that its exporters and producers should be obliged to supply information which goes beyond what is required under the Kyoto Convention. In this context it is evident that the transfer of processing operations in whole or part to the Community for the sole purpose of avoiding quota restrictions applied to low cost supplier countries is highly unlikely for obvious economic reasons, and no such case has ever been established. Neither will the way manufacture of a product is shared out between producers in various Member States of the Community influence in any way the functioning of the U.S. textile, import program. In respect of circumvention by fraudulent means, a close administrative cooperation has been established between the United States and Community Authorities to prevent this.

21. From the Community point of view, the following amendments are essential to prevent excessive documentation procedures hindering legitimate trade.

The Community should be considered as a single unit for the purpose of the declarations, as is the case under the Community's own origin system 2/ . Thus the first type of declaration (for wholly manufactured products) may be used when at least two stages of manufacture have been carried out within the Community, while the information required under the second type of declaration should relate to the Community as a whole.

1/ Annex D2 was accepted by the Community with effect from 6 December 1977 and by the United States with effect from 28 January 1984.

2/ See Article 8 in EEC Council Regulation No. 802/68 of 27 June 1968 (OJ No. L 148 - 26 June 1968).

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Furthermore, it should be made possible to use the first type of declaration (where the information to be given is limited to the country of origin) also for products for which the last manufacturing process carried out in the Community is of such importance that the origin is clearly established by the very nature of this operation. These cases should at least include the manufacturing operations listed under points 9 and 10 above.

22. It is furthermore suggested that to simplify administration and reduce paperwork the regulations should be amended or clarified in respect of the following:

- the declarations may be made on the invoice or another commercial document relating to the products or on a separate sheet of paper;

- the declarations may refer to the identification and description of the products on the invoice or other commercial documents (provided the description and other information supplied there is sufficiently detailed);

- the declarations may refer to the invoice or other commercial document also when more than one country of origin is involved (provided that the designation on the invoice or other commercial documents makes clear where the different parts of the consignment originate).

ADMINISTRATIVE COOPERATION TO PREVENT FRAUD

23. In the view of the Community, problems of fraudulent circumvention of textile policies are best dealt with by increased administrative cooperation between importing and exporting countries. This has been confirmed by its experience in this field. The existing provisions of the present Multifiber Arrangement, in particular its Article 8 and paragraph 14 of the 1981 Protocol of Extension, provide an adequate basis for such cooperation.

24. Bilaterally, between the United States and the Community a close administrative cooperation has been established for the purpose of detecting and preventing textile fraud within the framework of the Exchange of Letters of December 1980 between the U.S. Government and the Commission of the European Communities and the Mutual Assistance Agreements concluded between the United States and various Member States. It has recently been decided to extend further this cooperation to cover textile fraud in general.

The Community wishes to confirm its readiness to continue and improve further this mutual cooperation.

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SUMMARY

25. The Community considers that the U.S. Interim Regulations relating to Textiles and Textile Products need to be reconsidered to avoid creating serious hindrances to legitimate trade.

26. With regard to the origin rules, this revision should in particular include clarification of the origin rules in cases where the processing without any doubt confers origin (e.g. making-up from unmarked fabric, weaving, spinning, manufacture of carpets). To this list should be added dyeing and printing of fabric provided certain conditions are met. The rule on joining together of component parts should be reconsidered.

27. In respect of the declarations, the Community should be regarded as a single unit and the text of the declaration should mention only the country of origin when the last processing is recognised as substantial. The form and layout of the declarations should be simplified.

28. Problems in relation to fraudulent circumventions can only be dealt with effectively through administrative cooperation.

ANNEX

SUMMARY DESCRIPTION OF DYEING AND PRINTING PROCESS

The complete dyeing and printing process is Preparation, Colouration (printing) and Finishing.

PREPARATION

a) The preparation of the fabric for wet processing, e.g. the sewing of woven fabrics and the turning of knitted tubular fabrics.

b) Chemical treatments for the removal of impurities which can prevent the even take-up and fixation of the dye or can alter the shade. These treatments may include bleaching, scouring, mercerising, etc.

COLOURATION

Dyeing is defined as occurring when the colouring matter is absorbed by the substrate with a decrease in the concentration on the dye in the dyebath. The resulting material must possess some resistance to removal of dye by washing.

Different dyes are substantive on different fibers, but the principle is identical no matter what form the material is in, i.e. fiber, yarn, knitted fabric or woven fabric. Printing is a method of application of dyestuffs in a patterned form. The dyeing in this case takes place during the steaming process.

The only exception to the above definition is in the case of pigment dyeing or printing, when the colour in pigments form is fixed to the outside of the fiber by a resin.

FINISHING

Finishes may be obtained by mechanical or chemical means. They are applied to affect the handle, e.g. softening, calendering; to affect the appearance, e.g. raising, glazing, or to give the material specific properties, e.g. stability by setting, sanforizing, chlorinating or resin treatment, water repellency, flame resistance, etc.