

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

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

**January 6, 2003**

For both parties:

**1. Do you agree with the European Communities that the concept of substantial transformation "was intentionally left out of the disciplines to be applied during the transitional period" and that, therefore, "Members are under no obligation during the transitional period to base their origin rules on the concept of substantial transformation"? (EC's written submission, paras. 9 and 22)**

1. Yes. There is no basis for a Member to challenge another Member's rules of origin because it disagrees with the substance of those rules. It is specifically the substance of rules of origin that is the subject of negotiations during the current harmonization process (and including the parameters of substantial transformation).

**2. With reference to Article 2(b) of the ARO, do you consider that the prevention of quota circumvention as that term is used by the United States would need to be viewed as a "trade objective"?**

2. No. Limits on textile and apparel imports are, under the WTO *Agreement on Textiles and Clothing* (ATC), entirely consistent with WTO obligations, and Members are entitled to take steps to ensure that they are not circumvented. In fact, Article 5.1 of the ATC requires Members to establish legal provisions and administrative procedures to address and take action against such circumvention. If preventing quota circumvention were determined to be a "trade objective" for purposes of Article 2(b), then Members would be severely hampered in their ability to ensure compliance with textile and apparel quotas and to comply with Article 5 of the ATC. Origin determinations that allow traders and customs officials to draw bright lines ensure transparency and predictability, and allow importers, exporters, and Members to work together to prevent circumvention. The United States, in enacting Section 334, sought to address growing uncertainty in country of origin determinations caused by the myriad of origin claims which differed only slightly from each other, and that U.S. Customs officials were addressing on a case by case basis in different offices. Addressing such uncertainty also addressed circumvention of textile and apparel quotas.

**3. Does Article 2(d) of the ARO cover discrimination between the products of "other Members"? If so, what kind of products, i.e., identical products, like products, directly competitive or substitutable products, etc.?**

3. In Article 2(d), the ARO mandates, in relevant part, that Members ensure that “the rules of origin that they apply . . . shall not discriminate between other members, irrespective of the affiliation of the manufacturers of the good concerned.” This provision does not speak of discrimination “between products.” The first clause of Article 2(d) is aimed at ensuring that rules applied to imported goods are not more stringent than those used to determine domestic origin. The second clause is directed at precluding the type of discrimination, in the form of non-preferential rules, that would include a criterion based on the national affiliation of a company or nationality of its employees. The ARO clearly allows for differentiation of rules between products, as can be seen in the harmonization work program, where Members are addressing thousands of subheadings in the tariff schedule.

For the United States

**6. Does the United States agree that "favouring one Member over another" would qualify as a "trade objective" within the meaning of Article 2(b) (India's first written submission, para. 69; EC's written submission, para. 11)?**

4. As the United States indicated at the meeting with the Panel the United States believes that the phrase “favouring one Member over another” begs the question posed by Article 2(b). Rules of origin may favor one Member over another just by their existence, and thus cannot, on that basis alone, be considered a “trade objective” within the meaning of Article 2(b). For example, some Members may believe that a coffee product should originate based on where it is grown, while others may believe it should originate based on where the coffee beans are roasted. Whichever rule is chosen will “favor” some Members over others. Similarly, with watches, some Members may believe that origin should be conferred by assembly, others by the origin of certain components. Again, whichever rule is chosen will, in some Member’s view, “favor” some Members over others.

5. Similarly, changes in rules of origin for quota goods will usually have quota implications that will be different for different Members, depending on their quota levels and the nature of their exports. In accordance with the terms of bilateral textile agreements incorporated into the ATC, there are several examples where U.S. textile and apparel quotas appear to treat imports from India more favorably than those of other WTO Members, for example with respect to duck fabric, skirts, cotton terry towels, as well as the annual growth rates for certain categories. However, Members are clearly allowed to change rules of origin during the transition period, and any interpretation of the ARO that would prohibit such changes for any product, including products subject to quantitative restrictions authorized by the WTO Agreement, can therefore not be correct.

**7. Could the United States confirm that wherever the fabric formation rule is applicable pursuant to section 334 and section 405, operations subsequent the formation of the greige fabric, such as dyeing, printing and two or more finishing operations, as well as cutting, sewing and assembly, will not confer origin? (see paras. 23, 35 and 53 of India's first written submission)**

6. No. Under Section 334 this is true. However, where Section 405 applies, this is not true. Section 405 modifies the fabric formation rule. If a fabric or textile product is one of the products identified in Section 405, four or more operations subsequent to formation of the greige fabric does confer origin (dyeing *and* printing and two or more finishing operations).

**8. With reference to the US statement that "U.S. rules take into account which finishing operations merit changing origin, and that may vary based on the type of product" (US first written submission, para. 34), could the United States explain why the origin criteria for, e.g., silk scarves are different from the origin criteria for cotton scarves? Why is it that dyeing and printing of the fabric along with at least two finishing operations are considered as origin-conferring in the case of silk scarves, but not in the case of cotton scarves?**

7. Silk scarves and cotton scarves are different products, with different rules that reflect -- as is the case with all product-specific rules -- a determination based on assessing the relative importance of various operations or inputs to the final product. Consultations with the EC led to the conclusion as reflected in Section 405, providing an exception to the rules in Section 334 for certain specific products.

**9. What is the rationale for using different origin criteria for cotton blends with more than 16% cotton and those with 16% or less? (see India's first written submission, paras. 81-82)**

8. In Chapters 50 through 55 of the Harmonized System, there are distinct provisions for yarns and fabrics containing 85 % or more of a particular fiber. These provisions generally define such products as "wholly of" any given fiber. The Harmonized Tariff Schedule of the United States (HTSUS), general note 22 defines "wholly of" as meaning "that the goods are, except for negligible or insignificant quantities of some other material or materials, composed completely of the named material. By establishing a rule for certain goods containing 16% or more by weight of cotton, we ensured that we would cover the products defined in our settlement agreement. In negotiating the settlement agreement, the United States and the EC agreed, in order to resolve the dispute, to a definition of blends containing cotton that is consistent with the structure of the Harmonized System.

**10. What is the basis for the US contention that the "customs regulations implementing [sections 334 and 405]" are not measures which are before this Panel (US first written submission, note 15)? WT/DS243/5/Rev.1 refers to "the customs regulations implementing these Acts" (second paragraph).**

9. In stating that India's claims regarding the customs regulations implementing Section 334 and 405 should not form part of this dispute, the United States intended to indicate that India has not attempted to meet its burden with respect to these regulations. India has not made any claims with respect to the regulations in either its first submission or its oral statement. Moreover, India indicated at the meeting with the Panel that it was reconsidering its Article 2(e) claims relating to the administration of the rules of origin.

For both parties:

**11. With reference to Article 2(c) of the ARO, could the parties answer the following questions:**

**(a) Does Article 2(c) prohibit rules of origin which create the specified effects even in cases where those effects are entirely unintentional?**

10. At the meeting with the Panel, the United States indicated there has to be a clear causal connection between the effects and the rules, because rules of origin will always have an effect on international trade. Article 2(c) recognizes that rules may create unintentional effects, but directs Members to ensure that their rules do not impose *unduly* strict requirements, or require the fulfilment of conditions *not related* to the basis for the origin determination. *See also*, answer to question 11(c).

11. In addition, as was discussed in the U.S. answer to question 6, any change to a rule of origin may, in the view of the exporting Members concerned, affect different Members differently, or "more favorably." It is for just this reason that Members have had difficulty in reaching agreement on harmonized rules of origin. With respect to products subject to quota, this is particularly true. However, the ARO cannot be interpreted to prevent changes to rules of origin of products subject to such restrictions, as the ARO clearly authorizes such changes. A "trade effects" analysis would result in a *de facto* standstill requirement, a result that is clearly inconsistent with the ARO.

**(b) Does the phrase "restrictive [...] effects on international trade" mean that a complaining Member must show a net restrictive effect on international trade? Or would it be sufficient to show that the trade of one Member has been adversely affected, even if the trade of another Member has been favourably affected? In the latter case, could that one Member be a Member other than the complaining Member?**

12. Yes, the plain language of the provision indicates that there has to be a restrictive effect on *international* trade. As such it would not be sufficient to show a trade effect on only one Member. If the Members had intended to make the standard Member-specific, they would have made that clear. They did not because to adopt a standard where a party merely had to allege that there was a negative impact on its industry alone is not realistic. It does not take into consideration many factors such as natural changes in trading patterns, competition among

companies and countries, migration of industries and newly developing industries (based on labor rates, availability of natural resources, etc.). Instead, Members agreed to require actual demonstration of alleged effects. As noted in the U.S. answer to question 6, any change in a rule of origin may be viewed as favoring one Member over another, so a Member-specific analysis is not appropriate.

***(c) Could it be said that rules of origin inherently create "restrictive" effects on international trade, inasmuch as they may require traders to fulfil certain requirements (e.g., the preparation of certificates of origin, etc.)? If so, would this suggest that Article 2(c) implies some sort of a de minimis exception? If so, what would constitute a de minimis restrictive effect? In answering this question, please address the relevance of the second sentence of Article 2(c) ("unduly strict requirements") and the fourth preambular paragraph of the ARO ("unnecessary obstacles to trade").***

13. As indicated above, rules of origin inherently create "restrictive" effects on international trade. For example, ascertaining the origin of a product for purposes of trading with countries without clear origin rules can be extremely burdensome and trade restrictive. However, the United States does not believe that this suggests a *de minimis* standard for evaluating whether rules have a restrictive effect. Furthermore, we believe that this evaluation has to be qualitative as well as quantitative. As Article 2(c) indicates, rules of origin may impose strict requirements, and the preamble recognizes that rules may pose obstacles. This implies that for rules to be inconsistent with 2(c), a "*de minimis*" standard is inappropriate; a far higher standard must be met. This is borne out by the fact that Article 2(a) provides that Members may maintain rules of origin that will have some effect.

14. For example, the United States holds the view that the use of *ad valorem* percentages as a criterion in nonpreferential rules of origin, is inherently unstable and distortive because it can operate to "punish" inexpensive labor costs, is greatly affected by currency shifts, and requires excessive administrative burdens. Nonetheless, the ARO sanctions the use of *ad valorem* percentages as nonpreferential rules of origin and does not even place a limit on the percentage that could be used for such a rule. Therefore with terms like "unduly" and "unnecessary" and the lack of limitations in Article 2(a), Article 2(c) would imply a standard far greater than "*de minimis*."

***(d) How should the Panel assess whether particular rules of origin create "distorting" effects on international trade? What do you compare the existing rules of origin with?***

15. Whether particular rules create "distorting" effects on international trade can only be assessed by determining if there is a causal connection between the rules and international trade flows. That causal connection has to have an effect on international trade that reaches the level of a distortion. This is necessary because many elements, including changes in consumer

preference, can cause changes in trade patterns that could be mistaken for distortions. At the very least, it can be concluded that if imports in the products at issue are unchanged or have increased, it cannot be said that trade has been restricted or distorted. The existing rules do not have to be compared to any other factor.

***(e) What is the relationship between the first and second sentences of Article 2(c)? Do they provide for distinct and independent obligations, such that the second sentence adds an obligation which is not already covered by the first sentence? Or does the second sentence simply spell out one aspect, or consequence, of the obligation set out in the first sentence?***

16. The second sentence clarifies and provides an example of the conduct proscribed by the first sentence. Imposing "unduly strict requirements" as a "prerequisite for the determination of the country of origin" would be one way to "create restrictive effects on international trade" through rules of origin. Thus, the first clause of the second sentence is an instance of a violation of the first sentence. Similarly, to "require the fulfilment of a certain condition not related to manufacturing or processing as a prerequisite for the determination of the country of origin" would be one way to "create restrictive effects on international trade" through rules of origin. Thus, the second clause of the second sentence is another example of a violation of the first sentence. The second sentence also makes clear that "strict requirements" are allowed; it is only "unduly strict" requirements that are prohibited.

***(f) Is it appropriate to evaluate the trade effects of rules of origin introduced by a Member after the entry into force of the ARO by comparing those rules with rules of origin applied by the same Member before the entry into force of the ARO, i.e., with rules of origin which were not subject to the ARO?***

17. No. First, such an analysis would necessarily presume that the rules in place prior to the ARO did not themselves create restrictive, disruptive or distorting effects on trade, and that therefore any country that changed its rules adversely affected international trade. (It also creates the improper inference that countries that have not "changed" their rules are in compliance with this provision.) This was clearly not the intent of Article 2(c). Second, with respect to the U.S. change, such an analysis would be an "apples to oranges" comparison, since the old system called for a case-by-case determination, which did not always produce identical conclusions and similar results were not always based on identical fact patterns. Moreover, since Article 2(c) addresses the "rules themselves" it is clear that the appropriate subject of examination is the rules under their own terms, not in comparison to prior rules, or other Members' rules.

***12. In their submissions, the parties have referred to "visa requirements". Could the parties provide information regarding the legal basis in US law for these requirements and how they operate? Also, please address whether these requirements are imposed in order to administer textile and apparel quotas or textile and apparel rules of origin.***

18. The legal basis in U.S. law for “visa requirements” is Section 204 of the Agricultural Act of 1956. Visa requirements were originally developed to assist in the administration of quantitative restrictions established under the Multifiber Arrangement (MFA), in force from January 1, 1974 to December 31, 1994. Generally, whenever a quantitative restriction was established, the United States offered to establish a visa arrangement with the affected exporting country. An effective visa arrangement allows the authorities of the exporting country to control and allocate the export rights for goods subject to a quantitative restriction in the United States. Generally, once a visa arrangement is established, the United States will not allow entry, and will not debit applicable quantitative restrictions, unless the importer has secured and can produce a valid visa issued by the authorities of the exporting country. Under the terms of the visa arrangement, the visa is a certification from the authorities of the exporting country that the goods covered by the visa originate in the territory of that country, and that the exporter is authorized to export goods subject to the relevant quantitative restriction. A separate document, the Special Textile Declaration, is required for importations of textile products for U.S. Customs to determine the proper country of origin for those products. In certain cases, visa arrangements are established at the request of an exporting country, even in the absence of a quota restriction, in order to control exports and help deter illegal circumvention.

19. Visa arrangements for WTO members were notified to the Textile Monitoring Body as administrative arrangements pursuant to Article 2.17 of the Agreement on Textiles and Clothing.

For the United States

**13. Could the United States please submit relevant portions of the SAA? Exhibit US-5 appears to contain the Senate Report, and not the SAA.**

20. Exhibit US-6 was distributed at the meeting with the Panel on December 13, 2002.

**14. Could the United States elaborate further on how the fabric formation rule in section 334 advances each of the objectives stated by the United States at paras. 5, 11 and 29 of its first written submission as well as in exhibits US-5, IND-9 and IND-10? Please address "circumvention" and "transshipment" separately.**

21. As we noted at the meeting with the Panel and as is discussed in the United States Answers to Preliminary Questions by the Panel, question 2, the objectives outlined in the SAA with respect to Section 334 largely addressed problems that the U.S. Customs Service was encountering with respect to origin determinations for textile and apparel products - assembled products, not fabrics and fibers. See SAA at 769/113 (“The principles set forth in Section 334 will have the greatest significance for the rules of origin applicable to textile and apparel products other than fibers, yarns, or fabrics.”) The fabric formation rule is applicable to fabrics and fibers. The fabric formation rule reflects the U.S. judgment that the most substantial transformation in manufacturing fabric is the transformation from yarn to fabric. India would

apparently prefer that the U.S. maintain rules allowing minor processing to change the origin of what is basically fabric - as in a bedsheet.

22. In addition, Section 334 addressed circumvention by not recognizing cutting (as in cutting the edges of a bedsheet) as conferring origin; it prevents transshipment by setting an objective and predictable standard for identifying the origin of the product and making it more difficult to falsify documentation from importers; and it facilitates harmonization by having a clearly published standard and by bringing the practice in line with that of the EC and Canada (where cutting did not confer origin). The reference in the SAA to transshipment has the same meaning as “circumvention” as that term is used in the ATC; it is common in the United States to refer to circumvention as transshipment. Thus, it is not possible to address the terms separately.

For both parties:

**15. Do the parties consider that Article 2(b)-(e) of the ARO could be relied on to challenge a change in rules of origin per se, as opposed to the specific rules of origin in force at the time a challenge is brought? In other words, could a panel uphold claims under Article 2(b)-(e) that a change in rules of origin of itself is contrary to these provisions?**

23. No. As the United States noted in answer to question 11(f), it is not the change that must be examined under Article 2(b)-(e), but rather the rules in force at the time of the challenge. Indeed, Article 2(i) demonstrates that when the ARO imposes a specific obligation on changes in rules of origin it did so explicitly. Article 2(b)-(e) applies to the rules themselves, and 2(i) to changes.

**16. With reference to Article 2(b) of the ARO, do the parties consider that the term "used" should be interpreted to mean that a panel should assess whether rules of origin are used as instruments to pursue trade objectives as of the time they were adopted or as of the time of establishment of the panel?**

24. The United States does not consider that the determination of whether the rules at issue are used as instruments to pursue trade objectives depends on the timing of the examination of those rules. However, as we explained in answer to question 15, the issues in Article 2(b)-(e) are generally best addressed at the time of challenge, or establishment of the Panel. However, this would not preclude an examination of prior events to the extent that they offer relevant evidence. In considering Article 2(b), additional analysis as of the time of adoption may be relevant.

**17. The EC suggests that Article 2(c) of the ARO requires a showing of actual restrictive or distorting effects and that such actual effects would need to be demonstrated through trade statistics (EC's written submission, paras. 28 and 32). At the same time, the EC argues that protectionist intent would be indicated if what the EC calls a "quota-effect" could be**

***demonstrated, i.e., if it could be demonstrated, for instance, that certain products which used to be quota-free before certain rules of origin entered into force are subject to a quota after the entry into force of those rules (EC's written submission, paras. 23-24). Would a clear demonstration of such a (potential) "quota-effect", when there is no demonstration of actual adverse impact on the trade of a Member, be sufficient to establish restrictive or distorting effects under Article 2(c)?***

25. No. As discussed in the United States Answers to Preliminary Questions by the Panel, question 6, changes in rules of origin for quota goods will usually have quota implications that will be different for different Members, depending on their quota levels and the nature of their exports. The "quota effect" analysis would mean that any origin determinations that have a "quota effect" are impermissible, with the result of forcing a country to make no determinations at all, or at very least make no changes to existing rules (for the United States, that would mean a case by case determination). Or, in the alternative, a Member changing its rules of origin would be forced to exempt products subject to quota from those rules. The resulting case by case determination for the "quota protected" products would be burdensome and defeat the purpose of implementing uniform transparent written rules of origin for such products, as encouraged by the ARO.

26. The EC's analysis is based on an assumption that the appropriate topic for comparison is the market before and after changes to rules. The United States does not accept this comparison. In a given case, a change to rules of origin could eliminate disruptive, distorting, or disruptive effects produced by the former rules; or, it could be that, while the change in rules had an impact on trade, the result was a more transparent and more easily administered system, with benefits to trade, and rules that more accurately reflect commercial realities (i.e., reflect the important role of assembly). As a result, such changes would facilitate trade, and would not restrict, distort, or disrupt it. Indications of whether rules restrict, distort, or disrupt trade would be if they are overly burdensome to comply with; impose more strict requirements on some countries than on others; cause confusion in the market place (e.g., for coffee, if a country were to prohibit coffee grown in a particular country from being so marked, despite consumer reliance on this as an indication of quality, resulting in a dramatic decrease in exports from that country, disrupting the coffee market).

***18. With reference to Article 5.1 of the Agreement on Textiles and Clothing, which is referenced in the Senate Report (exhibit IND-10, p. 125), could the parties please answer the following questions:***

***(a) What is the meaning of the term "circumvention" as that term is used in Article 5.1? Please provide documentary support if available (e.g., WTO documents, negotiating documents, views of experts, etc.)?***

**(b) Does "circumvention" as that term is used in Article 5.1 cover both quota "evasion" (i.e., illegal action such as fraud, etc.) as well as quota "avoidance" (i.e., legal action intended to minimise the impact of a quota, etc.)?**

27. The ATC does not define the term "circumvention" but provides illustrative examples of practices aimed at evading quotas that can result in circumvention of the ATC in Article 5.1 and Article 5.5: transshipment, re-routing, false declaration concerning country of origin and falsification of official documents.

**(c) Does outward processing -- e.g., the shipment of Indian greige fabric to Sri Lanka, where the fabric is converted to bed linen and then exported to the United States -- constitute quota "circumvention" within the meaning of Article 5.1, in cases where no fraud, false declaration, etc. is involved?**

28. Outward processing resulting in products that meet U.S. rules of origin is not circumvention, provided that the products undergo substantial processing, in accordance with U.S. rules, in the second country.

**(d) What is "circumvention by transshipment"? Would this necessarily involve some illegal action such as fraud, false declaration, etc., or could the mere fact that shipments are transiting through third countries with or without alterations made to the goods concerned be considered "circumvention"?**

29. "Circumvention by transshipment" means shipping goods through a third country in order to disguise their true country of origin.

30. In *The Drafting History of The Agreement on Textiles and Clothing*, commissioned by the textile exporting country caucus, the International Textiles and Clothing Bureau, authors Marcelo Raffaelli and Tripti Jenkins trace the development of the concept of circumvention through the ATC's predecessor agreements, the Multifiber Arrangement (and its protocols of extension), the Long Term Arrangement on International Trade in Cotton Textiles, and the Short Term Arrangement on International Trade in Cotton Textiles.

31. In their commentary on ATC Article 5, they explain that the concept of circumvention, as used in that provision, was based on the previous experience of these predecessor agreements,<sup>1</sup> and entails a very broad description of the concept of circumvention - - violations of Customs law (such as illegal transshipment) are only one way that circumvention could occur. Other ways that circumvention could occur include "substitution of directly competitive textiles" for restrained textiles; and acts of omission by an importing country, if it did not take measures to restrain non-participants whose exports were causing market disruption, while at the same time

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<sup>1</sup> Attached as Exhibit US-7, page 101.

subjecting participating exporters to restraints.<sup>2</sup> Raffaelli and Jenkins also note that the element of “intention” was, at least originally, an important element, *including with respect to “legal” circumvention*.

32. Indeed, in discussing the negotiations which led to the 1986 Protocol of Extension to the Multifiber Arrangement, another expert observer recounted how the expansion of the MFA (to include restraints on products of silk-blend and non-cotton vegetable – SBOV – fibers in addition to cotton, wool and man-made fibers) was done in response to the growing substitution of directly competitive SBOV articles for their cotton or man-made counterpart. Brenda Jacobs, in *Renewal and Expansion of the Multifiber Arrangement*,<sup>3</sup> notes the growing use of “blends engineered to avoid the application of cotton, wool, and man-made fiber quotas.”<sup>4</sup> She recounts that the Long-Term Arrangement on International Trade in Cotton Textiles, which preceded the MFA, contained a provision, “Substitution of directly competitive textiles,” which allows an importing country to restrain imports whenever it had “reason to believe that imports of products in which this substitution has taken place to have increased abnormally, that is that this substitution has taken place solely in order to circumvent the provisions of this Arrangement.”<sup>5</sup>

***19. At p. 118, under the heading "Rules of Origin", the SAA appears to provide the objectives which the "country-of-assembly rule" "will serve". Could the parties address whether, and if so why, the four objectives mentioned thereafter, at pp. 118 and 119, also apply to the fabric formation rule in section 334? (US-6; para. 58 of India's first written submission; para. 29 of the US first written submission) If the four objectives mentioned in the SAA do not apply to the fabric formation rule, what are its objectives?***

33. The objectives do apply to the fabric formation rule but were specifically aimed at textile and apparel products, where the primary issue of concern was where significant assembly of those products took place. Combating circumvention through illegal transshipment is furthered by having a clearly stated fabric formation rule. This removed uncertainty and ambiguity which existed under the previous case by case determination of origin, specifically with respect to goods such as towels, linens or fabrics.

For the United States:

***31. As a matter of US law and for purposes of determining the purpose of section 334, is there a difference in the weight to be accorded to the SAA, on the one hand, and the House and Senate Reports, on the other hand?***

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<sup>2</sup> *Id.*, page 103.

<sup>3</sup> Law and Policy in International Business, v. 19, 1987, pages 7 - 50.

<sup>4</sup> *Id.*, page 41.

<sup>5</sup> *Id.*, page 42.

34. The SAA is the definitive statement of the United States government, reflecting the views of both the Executive and Legislative branches of government with authority in enacting legislation, and as such is more authoritative than the House and Senate reports. The legislative history in those reports demonstrates only the intent of one house of Congress, while the SAA reflects the position of the Administration, a position which has been approved by the Congress.

**32. Does it matter, for purposes of US law or otherwise, whether the Panel conducts its examination in terms of sections 334 and 405, taken together, or in terms of 19 U.S.C. § 3592 (exhibit IND-7)?**

35. While the United States is not aware that it makes a difference, in terms of U.S. law or otherwise, as noted in answer to question 37, Section 334 and Section 405 have different purposes, so to the extent that the Panel considers those purposes/objectives relevant, they should be examined separately.

**33. Does the US agree with India's statement that "the following are practical examples of the application of the Section 12.130 rules of origin for certain products such as silk scarves or bed linen. Silk fabric was woven in China and then exported to a third country, for example, Italy, where it was dyed and printed and subjected to two specified finishing operations. If that fabric was then made into a silk scarf and exported to the United States, that scarf would be determined of Italian origin" (India's first submission, para. 15)? Were such origin determinations made on a case-by-case basis or by direct application of section 12.130?**

36. Origin determinations were case by case, but also based on CFR 12.130. Although not elaborated upon in the question, bed linens are a good example of how origin was determined in the past. On a case by case basis, production processes and finishing processes were evaluated to decide if they were significant enough to constitute a substantial transformation.

**34. Section 334(b) incorporates the following provisions: "Except as otherwise provided for by statute, a textile and apparel product, for purposes of the customs laws and the administration of quantitative restrictions, originates in a country [...]." (emphasis added). Could the United States please identify relevant commercial policy instruments (e.g. trade statistics, origin marking, application of MFN tariff rates, etc.) for which the rules of origin provided for in section 334 are used?**

37. Section 334 is used to determine country of origin for purposes of gathering trade statistics, determining the appropriate country of origin for marking purposes, administering most favored nation rates of duties (NTR), and administering quota and visa requirements.

**35. Could the United States submit a copy of the following publication: United States International Trade Commission, Pub. No. 1695, The Impact of Rules of Origin on U.S. Imports and Exports (1985)? Is there a later government publication of this type?**

38. While this publication is out of print, we have located a copy that is now being transmitted to Geneva. The United States will provide it to the Panel and India as soon as possible.

**36. Regarding the anti-circumvention rationale of section 334, could the United States answer the following questions:**

**(a) What are the commercial policy instruments to which the fabric formation rule is linked and the circumvention of which that rule is intended to deter?**

39. The fabric formation rule is linked to all of the commercial policy instruments identified in the U.S. answer to question 34, and reflects the United States determination of when/where the most important or significant process or transformation takes place. *See also* answers to questions 2, 18 and 19.

**(b) With reference to the phrase "reduce circumvention of quota limits through outward processing" in the House Reports (IND-9, p.146), could the United States explain the concept of "circumvention through outward processing"?**

40. "Circumvention of quota limits through outward processing" refers to the concern with shippers/exporters trying to perform as little as possible processing in a third country to confer origin and still avoid a particular quota restraint. Many of these operations were minor to the production of the textile good. *See also* answer to question 18.

**(c) Is the reduction of circumvention through outward processing a reason why the United States continues to maintain section 334?**

41. The reduction of all forms of circumvention was a goal of Section 334. So were improving transparency and predictability, and advancing international rules of origin harmonization.

**(d) With reference to the phrase "reduce circumvention of quota limits through outward processing" in the House Reports (IND-9, p.146), could the United States explain which quotas were being circumvented? Specifically, to use US imports of silk scarves made in the European Communities from Chinese silk fabric as an example, was it (i) China's quota for silk fabric, (ii) China's quota for silk scarves or (iii) another Chinese quota which was being circumvented?**

42. The United States has never maintained quotas on silk scarves or silk fabric from China. Combating circumvention was a goal expressed with respect to Section 334, which was intended to prevent circumvention, in general, by providing greater certainty and predictability, rather than being directed at specific cases of circumvention.

***(e) Were the quotas affecting articles currently subject to the fabric formation rule more prone to circumvention than the quotas, if any, affecting articles currently subject to the assembly rule?***

43. No. Quota utilization is generally the primary factor in assessing whether a quota is “prone to circumvention.” This can change from year to year, as utilization rises or falls according to market demand. However, the current assembly rules make it harder for importers to circumvent and make it easier for Customs officers to detect circumvention.

***(f) Are quotas more prone to circumvention in a situation where dyeing, printing and two or more finishing operations confer origin on made-up non-apparel textile products than in a situation where fabric formation confers origin?***

44. The United States cannot say that this statement is necessarily true. Generally, any product that is subject to quota restrictions that are filled, i.e., any product that quota restrictions effectively limit imports of, is the most likely candidate for circumvention (these are usually products that are in high demand).

***37. Please elaborate on how section 405 advances the purposes asserted in the SAA -- which does not address section 405 – for section 334? (US oral statement, paras. 9 and 22)***

45. The purpose of the exceptions to the rules in Section 334, contained in Section 405, were to settle the WTO dispute with the EC. At the same time, we do believe that Section 405 advances the purposes expressed in the SAA.

***38. With reference to Article 2(c) of the ARO, could the United States provide its views as to how the phrase "create [...] disruptive effects on international trade" should be interpreted? Could the United States give examples of cases where rules of origin might create such effects?***

46. See answers to questions 11 and 17.