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SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

WRITTEN COMMENTS
ON
**H.R. 3066, A BILL TO CHANGE CUSTOMS
RULES-OF-ORIGIN FOR CERTAIN TEX-
TILE PRODUCTS**



DECEMBER 22, 1999

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ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-6649

October 18, 1999

No. TR-17

Crane Announces Request for Written Comments on H.R. 3066, a Bill to Change Customs Rules-of-Origin for Certain Textile Products

Congressman Philip M. Crane (R-IL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee is requesting written public comments for the record from all parties interested in H.R. 3066, a bill to amend the Uruguay Round Agreements Act with respect to the rules-of-origin for certain textile and apparel products.

BACKGROUND:

Section 334 of the Uruguay Round Agreements Act (URAA) (P.L. 103-465), the so-called "Breaux-Cardin" amendment, directed the U.S. Department of the Treasury to prescribe new regulations for determining the country-of-origin of textile and apparel products. In the new regulations, Treasury provided that certain fabrics, silk handkerchiefs and scarves are considered to originate where the base fabric is knit and woven, notwithstanding any further processing.

H.R. 3066, introduced at the Administration's request by Rep. Benjamin L. Cardin (D-MD) on October 13, 1999, would revert the rule-of-origin for these products to the rule that existed prior to enactment of URAA. The original rule permitted the processes of dyeing and printing to confer origin when accompanied by two or more finishing operations.

In May 1997, the European Union (EU) requested consultations in the World Trade Organization with the United States, charging that the changes to the rules of origin made by URAA violate United States obligations under a number of agreements: the Agreement on Textiles and Clothing, the Agreement on Rules of Origin, the Agreement on Technical Barriers to Trade, and the General Agreement on Tariffs and Trade. A number of countries requested third-party participation in the dispute. A "process-verbal" was concluded between the two countries in July 1997, which was later amended. Formal consultations were held in January 1999.

In August 1999, the United States and the EU agreed to settle the dispute. A second "process-verbal" concluded between the two countries obligates the U.S. Administration to submit legislation which, as described above, amends the rule-of-origin requirements in section 334 of the URAA in order to allow dyeing, printing, and two

or more finishing operations to confer origin on certain fabrics and goods. In particular, this dyeing and printing rule would apply to fabrics classified under the Harmonized Tariff Schedule (HTS) as silk, cotton, man-made, and vegetable fibers. It would also apply to the various products classified in 18 specific subheadings of the HTS listed in the bill, except for goods made from cotton, wool, or fiber blends containing 16 percent or more of cotton. H.R. 3066 is intended to implement part of the agreement between the United States and the European Union.

As an additional element of the settlement, the United States agreed to a special Customs administrative procedure that allows European textile exporters to ship multiple shipments of these products with a single visa accompanying the initial shipment.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and comments date noted on label, by the close of business, Monday, November 1, 1999, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at '[HTTP://WWW.HOUSE.GOV/WAYS_MEANS/](http://WWW.HOUSE.GOV/WAYS_MEANS/)'.

AMERICAN TEXTILE MANUFACTURERS INSTITUTE
WASHINGTON, DC 20036
November 1, 1999

The Honorable Phil Crane
Chairman
House Ways & Means Subcommittee on Trade
1102 Longworth Building
Washington, DC 20515

Re: Rules of Origin Bill (H.R. 3066)

Dear Mr. Chairman:

Pursuant to the Trade Subcommittee's October 17 press release (TR-17), I would like to share the views of the American Textile Manufacturers Institute (ATMI) on H.R. 3066, a bill to change Customs rules of origin for certain textile products. ATMI is the national trade association for the domestic textile industry. Our member companies operate in more than 30 states and account for over 75 percent of all fibers consumed by plants in the U.S.

H.R. 3066 would amend the current rules of origin for imported textile products (embodied in Section 334 of the Uruguay Round Agreements Act) with respect to fabrics which were both dyed and printed and subject to two additional defined finishing processes, and certain apparel accessories and home furnishings products made from such fabrics. For all such goods, origin would be determined by application of 19 CFR e (i), the rule which was in effect prior to July 1, 1996.

The changes effected by H.R. 3066 would apply to a small portion of textile goods entering the United States annually. Furthermore, it would resolve a long-standing dispute between the United States and the European Union (EU) regarding the application of the Section 334 rules to the referenced merchandise. Finally, under the pre-7/1/96 origin rules, a relatively small volume of EU imports entered the U.S. in the product areas impacted by H.R. 3066.

Therefore, ATMI does not object to H.R. 3066. Its passage would resolve differences between the EU and the U.S. on this issue and both parties may be better able to address common concerns regarding textiles in the upcoming WTO negotiations: namely, gaining effective access to the markets of developing countries, such as India, for U.S. and EU textile products.

Sincerely,

CARLOS MOORE
Executive Vice President

BRITISH-AMERICAN BUSINESS COUNCIL
November 1, 1999

Mr. A. L. Singleton,
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: H.R. 3066—*Rules of Origin for Certain Textile Products*

Dear Mr. Singleton:

I am writing on behalf of the Board of Directors and the members of the British-American Business Council (BABC) in response to Representative Philip M. Crane's October 18, 1999 request for comments on H.R. 3066. This would amend Section 334 of the Uruguay Round Agreements Act with respect to rules of origin for certain textile and apparel products.

The BABC is the largest trans-Atlantic business organization consisting of 32 British-American business associations and more than 4,000 companies in major cities throughout the United States and the United Kingdom, with affiliates in Canada and Mexico. The BABC seeks to promote and support business between the United

States and the United Kingdom and to foster a positive environment for trans-Atlantic trade and investment.

When the Uruguay Round Agreements Act was enacted, Section 334 directed the Treasury Department to issue regulations requiring certain fabrics, silk handkerchiefs and scarves to be labeled as originating in the country where the base fabric was knit and woven rather than the country where the fabric underwent substantial further processing. Thus, for example, an imported scarf dyed, printed and finished in a European country would be required to bear a label from the country where the raw silk was originally produced. The regulations worked against the marketability of bona fide EU products.

The EU challenged this requirement and requested consultations before the World Trade Organization. Following these consultations, the US and EU agreed to settle the dispute by amending Section 334 to allow dyeing, printing and two or more finishing operations to confer origin.

H.R. 3066 resolves this dispute in a reasonable way. It allows these products to benefit from the country of origin marking rules that apply generally to other products. It conforms to the consumer's perception that these products in fact originate in the EU. It promotes positive trade relations between the US and its trading partners. At a time when recent news reports have stressed the sometimes acrimonious disagreements between the US and EU over products such as bananas and beef hormones, the resolution of this issue in such a constructive manner is especially commendable.

Sincerely,

BARRY NEW
President

cc: The Honorable Philip Lader
Sir Christopher Meyer, KCMG

NEVILLE, PETERSON & WILLIAMS
NEW YORK, NEW YORK 10004
October 29, 1999
Our File: 2700-01

A.L. Singleton
Chief of Staff
Committee on Ways and Means
United States House of Representatives
1102 Longworth Office Building
Washington, D.C. 20515

Re: *H.R. 3066: Comments of Hedaya Home Fashions, Inc.*

Dear Sirs,

These comments are submitted on behalf of Hedaya Home Fashions, Inc. of New York City and Elizabeth, New Jersey, in response to the request of the Subcommittee on Trade for comments regarding H.R. 3066, a bill to amend Customs rules of origin for certain textile and apparel products. Although the Trade Subcommittee's solicitation of comments suggested that H.R. 3066 would restore the rule of origin for certain textile products "to the rule that existed prior to enactment of the URAA" [Uruguay Round Agreements Act], the bill as drafted will not accomplish this goal, at least with respect to home textile products and non-apparel "made up" textile articles.

Hedaya Home Fashions recommends that H.R. 3066 be amended to restore the pre-URAA rules of origin for to home textiles and other non-apparel textile goods. By restoring these origin rules, Congress can undo the trade-distorting effects of the current rules of origin, which have led the country's trading partners to challenge the rules before the World Trade Organization (WTO).

INTEREST OF COMMENTER

Hedaya Home Fashions, Inc. with facilities in New York City and Elizabeth, New Jersey, is an importer and distributor of home textile articles, such as quilts, comforters, wall hangings and a wide array of bed linens.

THE CURRENT RULES OF ORIGIN: SECTION 334 OF THE URAA

Section 334 of the Uruguay Round Agreements Act (URAA), 19 U.S.C. Section 3592, directed the Secretary of the Treasury to issue regulations establishing rules for determining the country of origin, "for purposes of the Customs laws and the administration of quantitative restrictions," of textile and apparel articles imported into the United States. These new rules, which became effective with respect to goods imported on or after July 1, 1996, represented a significant departure from the rules of origin which had previously been in effect.

Thus, for example, Section 334(b)(1)(A) of the URAA provides that textile products wholly obtained or produced in a single country will be considered a product of that country.¹ Section 334(b)(2) provides that yarns will be considered to originate in the country where they are spun or extruded. Section 334(b)(1)(C) provides that fabrics will be considered to originate in the country where they are formed (e.g., knitted or woven) in the "greige" state. Section 334 also provides that garments will originate in the country where they are "wholly assembled" by sewing.

Congress, in enacting Section 334, did not appear to devote much attention to the origin rules for home textile products and non-apparel textile goods.² Section 334(b)(2) of the URAA provides that the origin of these goods is to be determined according to the rules set forth in Section 334(b)(1)(A), (B), or (C), "as appropriate." The Secretary of the Treasury's implementing regulations [19 C.F.R. Section 102.21] treated virtually all home textile articles as "fabrics," fixing their origin according to the country where their constituent fabric was formed in the "greige" state. No account was taken of further manufacturing operations, such as the dyeing or printing of fabric, cutting, sewing, finishing, embroidering, or other value-added processing steps. In *Pac-Fung Feather Company v. United States*, 111 F.3d 114 (Fed. Cir. 1997), the United States Court of Appeals for the Federal Circuit sustained the Secretary's regulations as a proper interpretation of Section 334. Shortly thereafter, many of the United States' trading partners lodged complaints against the origin rules before the World Trade Organization, or sought consultations with the United States concerning their trade-distorting effect.

The adoption of a "fabric forward" rule of origin had a devastating effect on manufacturers, exporters and importers of home textile products worldwide. By recognizing these products as originating only in countries where their constituent fabrics were formed, Section 334 effectively wiped out quota allocations granted to countries which did not have indigenous fabric weaving or knitting industries, but which had historically manufactured these products through substantial transformation manufacturing operations, which included fabric processing, cutting and sewing assembly; such countries included Hong Kong, the Philippines, Macau and many others. Demand for quota allocations in fabric manufacturing countries soared, although (contrary to promises made when Section 334 was enacted), the United States did not increase quota allocations granted to fabric manufacturing countries to offset the trade-distorting effect of Section 334.

The result was reduced supply of home textile products for United States consumers, and increased prices. Furthermore, the Section 334 rules of origin distorted textile trade and investment patterns worldwide. Companies in the home textiles industry were forced to shift production operations from countries which had traditionally performed "value added" manufacturing operations on fabric, to countries with indigenous fabric-weaving industries. The overall effect of the Section 334 rules was to cut sharply the amount of home textile products and fabrics which could actually be shipped to the United States by countries with which the United States had signed bilateral textile agreements. United States trading partners have validly asserted that the Section 334 origin rules violated the country's obligations under multilateral trade agreements, including the Uruguay Round Agreement on Textiles and Clothing (ACT), the Uruguay Round Agreement on Rules of Origin, and many others. Indeed, H.R. 3066 is intended to address one of these WTO complaints against the United States.

¹ This rule, obviously, is non-controversial.

² Indeed, Congress' primary focus was on adopting a change to the country of origin rules for garments, switching from a regulatory regime under which origin was conferred by the cutting of fabric into garment parts, to a statutory one in which origin is conferred by the assembly of cut parts to make garments.

DISCUSSION

1. H.R. 3066 Will Not Restore the Pre-URAA Rules of Origin for Home Textiles and Non-Apparel Textile Articles

H.R. 3066, in its present form, will not accomplish the Subcommittee's goal of restoring the pre-URAA rule of origin for the products mentioned therein. At most, it will restore the pre-URAA rule of origin for certain fabrics. Home textile products, and non-apparel textile products will not be affected. In addition, H.R. 3066 arbitrarily excludes various types of made-up textile articles, and goods made from certain fabrics from its coverage.

Prior to enactment of the URAA, the Customs Regulations provided that the dyeing and printing of fabrics, combined with two or more named subsidiary operations, would be considered sufficient to effect a change in the fabric's origin. 19 C.F.R. Section 12.130. Section 1(a)(3)(B) of H.R. 3066 would restore this rule, and properly so.

However, this rule of origin never applied to home textile products and other "made-up" textile articles. Rather, these goods were considered to originate in the country where they underwent a "substantial transformation," in which fabric or cut components were transformed into a new and different article of commerce, having a name, character or use different than its components. Thus, for example, bed sheets were considered to originate in the country where their constituent fabrics were cut to length and width, hemmed, and otherwise processed to create a new article of commerce. See, e.g., Customs Headquarters 956204 of July 26, 1994. The "substantial transformation" rule of origin recognized the commercial reality that fabrics are but a material used to produce new and different articles of commerce; at the same time, it precluded insubstantial or "pass through" operations from conferring origin. H.R. 3066, however, does not restore this "substantial transformation" rule.

In any event, home textile products would derive no benefit from H.R. 3066's change in the origin rules for fabrics, since fabrics used to make such products are typically dyed or printed, but are virtually never subjected to both of these operations.

Thus, H.R. 3066, would not restore the pre-URAA origin rule for home textile and other made-up textile articles. These goods would, remain subject to the URAA's trade-distorting "fabric forward" origin rule, which has drawn attack from the United States' trading partners.

Hedaya Home Fashions urges the Subcommittee to consider amending H.R. 3066 in order to truly restore the pre-URAA rule of origin for home textile products.

2. H.R. 3066 Should Be Expanded to Cover All Home Textile and Non-Apparel Textile Products

Furthermore, to the extent that Congress changes rules of origin applicable to home textiles and other non-apparel textile products, there is no reason why these changes should not extend to all such products. H.R. 3066 does not attempt to do this. Instead, it contains a selective and arbitrary list of home textile and apparel products to which the new rules of origin would apply. There is no reason why, for example, kitchen linen made from terry fabrics should benefit from a change in rules of origin, while kitchen linen made from other types of fabrics should not. There is no reason why the rule should apply to printed bed linens (which are not dyed), but not to non-printed bed linens (which are dyed). There is no reason why the rules should apply to pre-filled comforters and quilts, but not to comforter or quilt shells.

If H.R. 3066 is to truly address the concerns posed by the WTO complaints which have been lodged against the Section 334, URAA, rules of origin, it must be expanded in scope to cover all home textile products.

3. H.R. 3066 Improperly Discriminates Against Products Made from Certain Types of Fabrics.

Finally, there is no basis why new rules of origin should apply to home textile and made-up products produced from certain fabrics, but not to substantially identical articles made from different fabrics. H.R. 3066 would arbitrarily withhold new rules of origin from home textile and non-apparel articles made from wool fabrics, cotton fabrics, or cotton blend fabrics containing 16% or more by weight of cotton. There is absolutely no basis in fact for making such a distinction, and neither Section 334 of the URAA, nor the pre-URAA rules of origin, have ever drawn such a distinction. The process of transforming cotton fabrics into home textile products, for example, is precisely the same as the process for transforming man-made fiber fabrics into such products. It would be arbitrary and unreasonable for Congress to enact legislation extending a rule of origin to goods made from some types of fabrics,

but not to others. This has never been done before. To permit such distinctions in a rules-based approach to origin would encourage the manipulation of such rules by groups interested in the production of certain types of fabrics or fabricated products, and would unfairly discriminate against classes of foreign goods, in violation of WTO rules.

CONCLUSION

Hedaya Home Fashions, Inc. enthusiastically support the restoration of pre-URAA rules of origin for home textile and non-apparel textile products. However, H.R. 3066, as currently drafted, would not accomplish this goal. While the bill may (or may not) resolve the ongoing World Trade Organization complaint filed by the European Union, it would leave the U.S. vulnerable to further challenges by other trading partners.

The URAA's application of a "fabric forward" origin rule for home textile products has had unintended trade-distorting effects, while providing no real benefits to U.S. manufacturers. The rule has no basis in prior practice, is not employed by any other country, and has no basis in commercial reality. Restoration of the pre-URAA rules of origin for these products is appropriate, but H.R. 3066 in its present form would not accomplish this goal. The legislation should be expanded and modified in order to authorize the Secretary of the Treasury to promulgate regulations which would truly restore the pre-URAA origin rules for these products.

Please contact the undersigned if we can furnish any additional information or assistance concerning this legislation.

Very truly yours,

JOHN M. PETERSON
Counsel to Hedaya Home Fashions, Inc.

JMP/mh
cc: Mr. Nathan Hedaya

NEVILLE, PETERSON & WILLIAMS
NEW YORK, NEW YORK 10004
October 29, 1999
Our File: 830-01

A.L. Singleton
Chief of Staff
Committee on Ways and Means
United States House of Representatives
1102 Longworth Office Building
Washington, D.C. 20515

Re: *H.R. 3066: Comments of Hillcrest International Inc.*

Dear Sirs,

These comments are submitted on behalf of Hillcrest International, Inc., of 260 Fifth Avenue, New York City, in response to the request of the Subcommittee on Trade for comments regarding H.R. 3066, a bill to amend Customs rules of origin for certain textile and apparel products. Although the Trade Subcommittee's solicitation of comments suggested that H.R. 3066 would restore the rule of origin for certain textile products "to the rule that existed prior to enactment of the URAA" [Uruguay Round Agreements Act], the bill as drafted will not accomplish this goal, at least with respect to home textile products and non-apparel "made up" textile articles.

Hillcrest International recommends that H.R. 3066 be amended to restore the pre-URAA rules of origin for to home textiles and other non-apparel textile goods. By restoring these origin rules, Congress can undo the trade-distorting effects of the current rules of origin, which have led the country's trading partners to challenge the rules before the World Trade Organization (WTO).

INTEREST OF COMMENTER

Hillcrest International, based in New York City, is an importer and distributor of home textile articles, such as flat and fitted bedsheets, pillowcases, duvets, and bed valances.

THE CURRENT RULES OF ORIGIN: SECTION 334 OF THE URAA

Section 334 of the Uruguay Round Agreements Act (URAA), 19 U.S.C. Section 3592, directed the Secretary of the Treasury to issue regulations establishing rules for determining the country of origin, "for purposes of the Customs laws and the administration of quantitative restrictions," of textile and apparel articles imported into the United States. These new rules, which became effective with respect to goods imported on or after July 1, 1996, represented a significant departure from the rules of origin which had previously been in effect.

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The result was reduced supply of home textile products for United States consumers, and increased prices. Furthermore, the Section 334 rules of origin distorted textile trade and investment patterns worldwide. Companies in the home textiles industry were forced to shift production operations from countries which had traditionally performed "value added" manufacturing operations on fabric, to countries with indigenous fabric-weaving industries. The overall effect of the Section 334 rules was to cut sharply the amount of home textile products and fabrics which could actually be shipped to the United States by countries with which the United States had signed bilateral textile agreements. United States trading partners have validly asserted that the Section 334 origin rules violated the country's obligations under multilateral trade agreements, including the Uruguay Round Agreement on Textiles and Clothing (ACT), the Uruguay Round Agreement on Rules of Origin, and many others. Indeed, H.R. 3066 is intended to address one of these WTO complaints against the United States.

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DISCUSSION

1. H.R. 3066 Will Not Restore the Pre-URAA Rules of Origin for Home Textiles and Non-Apparel Textile Articles

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In any event, home textile products would derive no benefit from H.R. 3066's change in the origin rules for fabrics, since fabrics used to make such products are typically dyed or printed, but are virtually never subjected to both of these operations.

Thus, H.R. 3066, would not restore the pre-URAA origin rule for home textile and other made-up textile articles. These goods would, remain subject to the URAA's trade-distorting "fabric forward" origin rule, which has drawn attack from the United States' trading partners.

Hillcrest International urges the Subcommittee to consider amending H.R. 3066 in order to truly restore the pre-URAA rule of origin for home textile products.

2. H.R. 3066 Should Be Expanded to Cover All Home Textile and Non-Apparel Textile Products

Furthermore, to the extent that Congress changes rules of origin applicable to home textiles and other non-apparel textile products, there is no reason why these changes should not extend to all such products. H.R. 3066 does not attempt to do this. Instead, it contains a selective and arbitrary list of home textile and apparel products to which the new rules of origin would apply. There is no reason why, for example, kitchen linen made from terry fabrics should benefit from a change in rules of origin, while kitchen linen made from other types of fabrics should not. There is no reason why the rule should apply to printed bed linens (which are not dyed), but not to non-printed bed linens (which are dyed). There is no reason why the rules should apply to pre-filled comforters and quilts, but not to comforter or quilt shells.

If H.R. 3066 is to truly address the concerns posed by the WTO complaints which have been lodged against the Section 334, URAA, rules of origin, it must be expanded in scope to cover all home textile products.

3. H.R. 3066 Improperly Discriminates Against Products Made from Certain Types of Fabrics.

Finally, there is no reason why new rules of origin should apply to home textile and made-up products produced from certain fabrics, but not to substantially identical articles made from different fabrics. H.R. 3066 would arbitrarily withhold new rules of origin from home textile and non-apparel articles made from wool fabrics, cotton fabrics, or cotton blend fabrics containing 16% or more by weight of cotton. There is absolutely no basis in fact for making such a distinction, and neither Section 334 of the URAA, nor the pre-URAA rules of origin, have ever drawn such a distinction. The process of transforming cotton fabrics into home textile products, for example, is precisely the same as the process for transforming man-made fiber fabrics into such products. It would be arbitrary and unreasonable for Congress to enact legislation extending a rule of origin to goods made from some types of fabrics,

but not to others. This has never been done before. To permit such distinctions in a rules-based approach to origin would encourage the manipulation of such rules by groups interested in the production of certain types of fabrics or fabricated products, and would unfairly discriminate against classes of foreign goods, in violation of WTO rules.

CONCLUSION

Hillcrest International enthusiastically support the restoration of pre-URAA rules of origin for home textile and non-apparel textile products. However, H.R. 3066, as currently drafted, would not accomplish this goal. While the bill may (or may not) resolve the ongoing World Trade Organization complaint filed by the European Union, it would leave the U.S. vulnerable to further challenges by other trading partners.

The URAA's application of a "fabric forward" origin rule for home textile products has had unintended trade-distorting effects, while providing no real benefits to U.S. manufacturers. The rule has no basis in prior practice, is not employed by any other country, and has no basis in commercial reality. Restoration of the pre-URAA rules of origin for these products is appropriate, but H.R. 3066 in its present form would not accomplish this goal. The legislation should be expanded and modified in order to authorize the Secretary of the Treasury to promulgate regulations which would truly restore the pre-URAA origin rules for these products.

Please contact the undersigned if we can furnish any additional information or assistance concerning this legislation.

Very truly yours,

JOHN M. PETERSON
Counsel to Hillcrest International Inc.

JMP/mh
cc: Mr. Jit Joshi

Statement of Neckwear Association of America, Inc., New York, New York

INTRODUCTION

The Neckwear Association of America (NAA) is a trade association comprised of domestic necktie producers and their suppliers. NAA member companies account for the vast majority of neckties produced in the United States.

This statement is submitted by NAA in response to the Ways and Means Trade Subcommittee's request for public comments on H.R. 3066, introduced by Congressman Cardin, "to amend the Uruguay Round Agreements Act with respect to the rules of origin for certain textile and apparel products." H.R. 3066 would revert the rule-of-origin of textile and apparel products to the rule that existed prior to enactment of the URAA. The original rule permitted the processes of dyeing and printing to confer origin when accompanied by two or more finishing operations. H.R. 3066 has NAA's strong support for the reasons set out below.

BACKGROUND

Under revised customs rules of origin, which took effect in July 1996, silk fabric—formerly considered to be the product of the country where the fabric was dyed, printed, and subject to at least two other processes—changed to the country where the fabric is woven. In the case of silk printed fabric, the country where the fabric is woven is generally China.

U.S. Federal Trade Commission (FTC) rules guide the labeling of textile and apparel products that are offered for sale in the U.S. market. Pursuant to the Textile Fiber Products Identification Act (Rule 33(a)(3)), "[e]ach textile fiber product made in the United States, either in the whole or part, of imported materials shall contain a label disclosing these facts, for example:

"Made in USA of imported fabric"

Therefore, U.S. necktie producers who had formerly advertised these silk fabrics as Italian could no longer do so without being in violation of U.S. marking rules.

SILK PRINTED FABRIC: CHINESE OR ITALIAN?

Italy is a leading supplier of printed silk fabrics to the U.S. neckwear industry. Italy's reputation for top fashion and design in this category is among the highest in the world. While Italy does not actually weave the silk greige goods, its printing and processing of them is quite substantial, and, Italy adds the all important "Italian" designs that give these fabrics their unique identity and great value. Therefore, our industry, its customers, and, up until recently, the U.S. Government have always considered these fabrics to be Italian; and U.S. necktie-makers have traditionally utilized labeling practices that portray them as Italian.

IMPACT ON U.S. TIE PRODUCERS AND NEED TO REVERT TO OLD RULE OF ORIGIN

Two thirds of all neckties produced in the United States are made of imported silk print fabric. Silk print fabric is not made in the United States; a good portion of it is imported from Italy. In short, there are no domestic alternatives.

The adoption of the new U.S. textile origin rules in July 1996 jeopardized the ability of U.S. necktie producers to continue their previous marking practices for sales in the U.S. market: Under the new origin rules, the marking could no longer indicate that the silk tie fabric was of Italian origin. Such a change threatened U.S. producers' ability to recover the costs of the very expensive Italian piece goods in the U.S. marketplace, and also placed them at a competitive disadvantage with Italian finished silk necktie producers, who are able to label their goods as being entirely the product of Italy, even though the piece goods used in the U.S. and Italian ties are the same.

To its credit, the FTC has provided some help to the industry in the form of a letter ruling dated March 27, 1996, which permits U.S. tie producers to show on the label that the imported silk fabric was printed in Italy. Additionally, the recent enactment into law of legislation that changes U.S. marking rules with respect to these fabrics essentially codifies the FTC ruling. The industry welcomes these important steps, but it deems essential the return to the pre-existing rule of origin for dyed and printed silk fabrics. H.R. 3066 will go a long way toward clearing up any confusion that remains about how these fabrics should be marked when they are used as a component in U.S.-made neckties. NAA is highly supportive of this legislation as it would allow U.S. tie manufacturers to return to unambiguous labeling practices with respect to its products.

NEVILLE, PETERSON & WILLIAMS
NEW YORK, NY 10004
October 28, 1999
Our File: 1636-01

A.L. Singleton
Chief of Staff
Committee on Ways and Means
United States House of Representatives
1102 Longworth Office Building
Washington, D.C. 20515

Re: H.R. 3066: Comments of Pac-Fung Feather Company and Natural Feather & Textiles, Inc.

Dear Sirs,

These comments are submitted on behalf of Pac-Fung Feather Company of Hong Kong ("Pac Fung") and Natural Feather & Textiles, Inc. of Eden Prairie, Minnesota ("NFT"), in response to the request of the Subcommittee on Trade for comments regarding H.R. 3066, a bill to amend Customs rules of origin for certain textile and apparel products. Although the Trade Subcommittee's solicitation of comments suggested that H.R. 3066 would restore the rule of origin for certain textile products to the rule that existed prior to enactment of the URAA [Uruguay Round Agreements Act], the bill as drafted will not accomplish this goal, at least with respect to home textile products and non-apparel "made up" textile articles.

Pac-Fung and NFT recommend that H.R. 3066 be amended to restore the pre-URAA rules of origin for to home textiles and other non-apparel textile goods. By restoring these origin rules, Congress can undo the trade-distorting effects of the

current rules of origin, which have led the country's trading partners to challenge the rules before the World Trade Organization (WTO).

INTEREST OF COMMENTERS

Pac-Fung is a Hong Kong-based manufacturer of home textile products, including cotton comforter shells, down-filled comforters, featherbeds, flat and fitted bed-sheets, pillowcases, duvets, and bed valances. NFT, headquartered in Eden Prairie, Minnesota, imports, sells and distributes home textile and furnishing products manufactured by Pac-Fung.

THE CURRENT RULES OF ORIGIN: SECTION 334 OF THE URAA

Section 334 of the Uruguay Round Agreements Act (URAA), 19 U.S.C. Section 3592, directed the Secretary of the Treasury to issue regulations establishing rules for determining the country of origin, "for purposes of the Customs laws and the administration of quantitative restrictions," of textile and apparel articles imported into the United States. These new rules, which became effective with respect to goods imported on or after July 1, 1996, represented a significant departure from the rules of origin which had previously been in effect.

Thus, for example, Section 334(b)(1)(A) of the URAA provides that textile products wholly obtained or produced in a single country will be considered a product of that country. Section 334(b)(2) provides that yarns will be considered to originate in the country where they are spun or extruded. Section 334(b)(1)(C) provides that fabrics will be considered to originate in the country where they are formed (e.g., knitted or woven) in the "greige" state. Section 334 also provides that garments will originate in the country where they are "wholly assembled" by sewing.

Congress did not appear to devote much attention to the origin rules for home textile products and non-apparel textile goods. Section 334(b)(2) of the URAA provides that the origin of these goods is to be determined according to the rules set forth in Section 334(b)(1)(A), (B), or (C), "as appropriate." The Secretary of the Treasury's implementing regulations [19 C.F.R. Section 102.21] treated virtually all home textile articles as "fabrics," fixing their origin according to the country where their constituent fabric was formed. No account was taken of further manufacturing operations, such as the dyeing or printing of fabric, cutting, sewing, finishing, embroidering, or other value-added processing steps. In *Pac-Fung Feather Company v. United States*, 111 F.3d 114 (Fed. Cir. 1997), the United States Court of Appeals for the Federal Circuit sustained the Secretary's regulations as a proper interpretation of Section 334.

The adoption of a "fabric forward" rule of origin had a devastating effect on manufacturers, exporters and importers of home textile products worldwide. By recognizing these products as originating only in countries where their constituent fabrics were formed, Section 334 effectively wiped out quota allocations granted to countries which did not have indigenous fabric weaving or knitting industries, but which had historically manufactured these products through substantial transformation manufacturing operations, which included fabric processing, cutting and sewing assembly, such as Hong Kong, the Philippines, Macau and many others. Demand for quota allocations in fabric manufacturing countries soared, although (contrary to promises made when Section 334 was enacted), the United States did not increase quota allocations granted to fabric manufacturing countries.

The result was reduced supply of home textile products for United States consumers, and increased prices. Furthermore, the Section 334 rules of origin distorted textile trade and investment patterns worldwide. Unable to supply its United States customers from its manufacturing plants in Hong Kong and Macau, Pac-Fung shifted manufacturing operations to the People's Republic of China, one of the few countries with the capacity to weave the high-density "downproof" cotton fabrics from which many of the company's products are made. United States trading partners argued, with cause, that the Section 334 origin rules violated the country's obligations under multilateral trade agreements, including the Uruguay Round Agreement on Textiles and Clothing (ACT), the Uruguay Round Agreement on Rules of Origin, and many others. Indeed, H.R. 3066 is intended to address one of these WTO complaints against the United States.

DISCUSSION

1. H.R. 3066 Will Not Restore the Pre-URAA Rules of Origin for Home Textiles and Non-Apparel Textile Articles

H.R. 3066, in its present form, will not accomplish the Subcommittee's goal of restoring the pre-URAA rule of origin for the products mentioned therein. At most,

it will restore the pre-URAA rule of origin for certain fabrics. Home textile products, and non-apparel textile products will not be affected. In addition, H.R. 3066 arbitrarily excludes various types of made-up textile articles, and goods made from certain fabrics from its coverage.

Prior to enactment of the URAA, the Customs Regulations provided that the dyeing and printing of fabrics, combined with two or more named subsidiary operations, would be considered sufficient to effect a change in the fabric's origin. 19 C.F.R. Section 12.130. Section 1(a)(3)(B) of H.R. 3066 would restore this rule, and properly so.

However, this rule of origin never applied to home textile products and other "made-up" textile articles. Rather, these goods were considered to originate in the country where they underwent a "substantial transformation," in which fabric or cut components were transformed into a new and different article of commerce, having a name, character or use different than its components. Thus, for example, bed sheets were considered to originate in the country where their constituent fabrics were cut to length and width, hemmed, and otherwise processed to create a new article of commerce. See, e.g., Customs Headquarters 956204 of July 26, 1994. The "substantial transformation" rule of origin recognized the commercial reality that fabrics are but a material used to produce new and different articles of commerce; at the same time, it precluded insubstantial or "pass through" operations from conferring origin. H.R. 3066, however, does not restore this "substantial transformation" rule.

In any event, home textile products would derive no benefit from H.R. 3066's change in the origin rules for fabrics, since fabrics used to make such products are typically dyed or printed, but are virtually never subjected to both of these operations.

Thus, H.R. 3066, would not restore the pre-URAA origin rule for home textile and other made-up textile articles. These goods would, remain subject to the URAA's trade-distorting "fabric forward" origin rule, which has drawn attack from the United States' trading partners.

Pac Fung and Natural Feather urged the Subcommittee to consider amending H.R. 3066 in order to truly restore the pre-URAA rule of origin for home textile products.

2. H.R. 3066 Should Be Expanded to Cover All Home Textile and Non-Apparel Textile Products

Furthermore, to the extent that Congress changes rules of origin applicable to home textiles and other non-apparel textile products, there is no reason why these changes should not extend to all such products. H.R. 3066 does not attempt to do this. Instead, it contains a selective and arbitrary list of home textile and apparel products to which the new rules of origin would apply. There is no reason why, for example, kitchen linen made from terry fabrics should benefit from a change in rules of origin, while kitchen linen made from other types of fabrics should not. There is no reason why the rule should apply to printed bed linens (which are not dyed), but not to non-printed bed linens (which are dyed). There is no reason why the rules should apply to pre-filled comforters and quilts, but not to comforter or quilt shells.

If H.R. 3066 is to truly address the concerns posed by the WTO complaints which have been lodged against the Section 334, URAA, rules of origin, it must be expanded in scope to cover all home textile products.

3. H.R. 3066 Improperly Discriminates Against Products Made from Certain Types of Fabrics.

Finally, there is no basis why new rules of origin should apply to home textile and made-up products produced from certain fabrics, but not to substantially identical articles made from different fabrics. H.R. 3066 would arbitrarily withhold new rules of origin from home textile and non-apparel articles made from wool fabrics, cotton fabrics, or cotton blend fabrics containing 16% or more by weight of cotton. There is absolutely no basis in fact for making such a distinction. The process of transforming cotton fabrics into home textile products, for example, is precisely the same as the process for transforming man-made fiber fabrics into such products. It would be arbitrary and unreasonable for Congress to enact legislation extending a rule of origin to goods made from some types of fabrics, but not to others. Indeed, we are aware of no instance in which the pre-URAA rules of origin or Customs administrative rulings made any distinction in the rules of origin applied to products based on the composition of the fabrics used therein.

CONCLUSION

Pac-Fung Feather Company and Natural Feather & Textiles, Inc. enthusiastically support the restoration of pre-URAA rules of origin for home textile and non-apparel textile products. However, H.R. 3066, as currently drafted, would not accomplish this goal. While the bill may (or may not) resolve the ongoing World Trade Organization complaint filed by the European Union, it would leave the U.S. vulnerable to further challenges by other trading partners.

The URAA's application of a "fabric forward" origin rule for home textile products has had unintended trade-distorting effects, while providing no real benefits to U.S. manufacturers. Restoration of the pre-URAA rules of origin for these products is appropriate, but H.R. 3066 in its present form would not accomplish this goal. The legislation should be expanded and modified in order to authorize the Secretary of the Treasury to promulgate regulations which would truly restore the pre-URAA origin rules for these products.

Please contact the undersigned if we can furnish any additional information or assistance concerning this legislation.

Very truly yours,

JOHN M. PETERSON
*Counsel to Pac Fung Feather Company &
 Natural Feather & Textiles, Inc.*

JMP/mh
 cc: Mr. Hamen Fan

NEVILLE, PETERSON & WILLIAMS
 NEW YORK, NY 10004
 October 29, 1999
 Our File: 2324-01

VIA FEDERAL EXPRESS

Committee on Ways and Means
 U.S. House of Representatives
 1102 Longworth House Office Building
 Washington, D.C. 20515

Attention: A.L. Singelton, Chief of Staff

Re: *Comments Of WestPoint Stevens, Inc. Concerning H.R. 3066*

Dear Esteemed Committee Members:

These comments are filed on behalf of WestPoint Stevens, Inc. ("WestPoint") of West Point, Georgia concerning H.R. 3066, a bill proposed to amend the rules of origin for textile products set forth in 19 U.S.C. § 3592. WestPoint is the largest U.S. manufacturer of sheets and towels, and its business will be directly impacted by this bill. Accordingly, WestPoint asks that the Committee consider its comments in deciding whether to enact H.R. 3066 as currently drafted.

1. *Executive Summary*

A. The rules of origin for textile products should apply equally to fabric woven in the United States that is exported for processing abroad. Such is not the case under 19 U.S.C. § 3592. Congress should use this bill to clarify that U.S. origin fabric is accorded equal treatment in origin determinations.

B. The bill should clarify whether an importer can combine operations in subparagraph 3(B) and 3(C) in making an origin determination.

C. The exclusion of cotton rich sheets and towels from subparagraph 3(C) is unreasonable.

2. *WestPoint Stevens*

WestPoint is the largest domestic manufacturer of sheets and towels. It employs approximately 17,000 people in the domestic textile industry, and produces approximately 5,000 miles of fabric each day in the United States. WestPoint has manufac-

turing facilities in Alabama, Florida, Georgia, Maine, North Carolina and South Carolina.

Despite its commitment to producing quality products in the United States, WestPoint is a global company. It exports U.S. origin fabric for purposes of printing abroad. Printing may be performed outside of the United States due to the fact that certain patterns require the use of equipment that is located abroad, or domestic printing equipment is being utilized to create other patterns. In addition to exporting U.S. origin fabric for certain processing operations, WestPoint imports sheets and towels that are produced abroad from foreign origin and domestic origin fabric.

3. Overview of the Country of Origin Laws Affecting Sheets and Towels

Prior to 1985, the country of origin of sheets and towels was determined by the substantial transformation test, which applies to all imported products. Thus, if fabric was woven in Country A, stenciled with cut marks and a design in Country A, and embroidered in Country A, and then exported to Country B for purposes of cutting and sewing into a completed pillow case, the pillow case would be considered to be a product of Country B, because the fabric was substantially transformed into a new article of commerce (a pillow case) in that country.¹

In 1985, the United States Customs Service promulgated regulations governing the origin of textile products. These regulations, which are set forth in 19 C.F.R. § 12.130, contain an extensive list of factors to be considered in determining the origin of textile products, and provide examples of operations that would, and would not, effect a change in origin. With respect to fabric, the regulations required that, in order for fabric to undergo a change in origin, the fabric must be both dyed *and* printed in the second country of production, plus the fabric had to be subjected to at least two designated finishing operations.

With respect to sheets, Customs required that the fabric be cut to width and length in the second country of production, and that an additional substantial sewing operation be performed in that country, such as attaching a separate hem to the body of the sheet.²

In December of 1994, the rules of origin were changed again. Now, sheets and towels are considered to be products of the country where the fabric was woven. 19 U.S.C. § 3592.

The only exception to this "fabric forward" rule of origin for sheets and towels is where fabric is woven in the United States. When U.S. origin fabric is exported for purposes of dyeing or printing, the returning fabric is considered to be a product of the country of dyeing or printing. If this returned fabric is then used in the production of a sheet in the United States, the Customs Service requires that the finished sheet be marked as a "Product of" the country where the dyeing/printing operation occurs. Clearly, 19 U.S.C. § 3592 produces absurd and anomalous results. A sheet manufactured in the United States, from fabric woven in the United States from cotton grown in the United States, must nonetheless be labeled as a foreign origin product, if the fabric was dyed or printed abroad.

The Federal Trade Commission, the agency with general authority over "Made in U.S.A." claims and the labeling of textile products pursuant to the Textile Fiber Products Identification Act, has deferred to Customs' origin determinations as they apply to textile products, including those produced in the United States from foreign origin fabric, or U.S. origin fabric that was exported for purposes of processing. 63 *Federal Register* 7508 (February 13, 1998).

4. WestPoint's Comments

A. The Rules of Origin Should Equally Apply To U.S. Origin Fabric

As indicated above, the Customs Service does not follow the fabric forward rule of origin for sheets and towels when the fabric is formed in the United States. The basis for Customs' unequal treatment of fabric formed in the United States was stated in *Customs Headquarters Ruling 959501 (August 9, 1996)*. In this administrative determination, Customs held that U.S. origin fabric that was exported to Japan or South Korean for finishing operations lost its status as a product of the United States when it was returned to this country. Customs claimed that this requirement was dictated by 19 C.F.R. § 12.130 even though these regulations had been supplanted by 19 U.S.C. § 3592. A copy of this administrative ruling is attached as *Exhibit A*. Similar rulings have been issued with respect to U.S. origin fabric exported

¹ *Belcrest Linens v. United States*, 741 F.2d 1368 (Fed. Cir. 1984).

² See, *General Notice Modification of Customs Ruling Letters Relating to the Country of Origin of Sheets*, published in the Customs Bulletin on April 5, 1995.

for use in the production of bedding products abroad.³ In these rulings, the agency has held that the fabric forward rule of origin for bedding products does not apply when the fabric is formed in the United States.

The language Congress chose in drafting 19 U.S.C. § 3592 is clear. This statute commences by stating: "Except as otherwise provided by *statute . . .*" In Customs' interpretation of the textile country of origin rules as they apply to U.S. origin fabric exported for purposes of processing abroad, the agency has elevated a regulation to the same stature as a Congressionally enacted statute. Although WestPoint has filed comments with Customs addressing this issue, the agency has failed to respond to WestPoint's comments.

WestPoint urges Congress to take this opportunity to ensure that *all* fabrics are equally treated under 19 U.S.C. § 3592 in rendering origin determinations. There is no basis for treating U.S. origin fabric differently than fabric woven in any other country. Indeed, this discriminatory treatment has placed U.S. fabric producers, such as WestPoint, at a distinct disadvantage in the global marketplace. If a sheet manufacturer in Country A (a quota country) has the option of purchasing fabric woven in Country B or fabric woven in the United States, and Country B is a non-quota country, the foreign manufacturer will select fabric woven in Country B in order to avoid quota requirements that would apply if U.S. origin fabric was utilized.

By eliminating this discriminatory treatment of fabric formed in the United States, Congress will open up export opportunities for fabric woven in the United States. It will also correct the absurd result that a sheet produced in the United States from fabric woven in the United States must be marked as foreign origin product simply because the fabric was subjected to printing operations abroad.

B. The Bill Should Clarify Whether An Importer Can Combine Subparagraph 3(B) and 3(C) In Rendering Origin Determinations

H.R. 3066 specifies that, with respect to fabric, a change in origin occurs when the fabric is subjected to the following operations in the second country of production: dyeing and printing plus two or more of the following operations: bleaching, shrinking, fulling, decatizing, permanent stiffening, weighting, permanent embossing or moiring. Subparagraph 3(B).

Subparagraph 3(C) applies to a limited class of home textile products. It is unclear from the existing language of H.R. 3066 what will occur if fabric satisfies the requirements of subparagraph 3(B) and the fabric is then used abroad to produce a finished home textile product that is not classified in one of the designated provision in subparagraph 3(C).

For example, assume WestPoint subjects Indonesian fabric to dyeing and printing operations (plus two or more of the designated finishing operations) in Italy, and then uses this fabric in the production of a finished sheet in Italy. It appears from the existing language that, although the fabric may have undergone a change in origin, because the finished sheet is not classified under one of the designated provisions in subparagraph 3(C), the sheet would not be considered to have undergone a change in origin. Thus, if WestPoint shipped the dyed and printed fabric to the United States for use in the production of a sheet, the sheet produced in the United States would be marked "Made in Italy," and if this same fabric were used in the production of a sheet in Italy, the finished sheet would be marked "Made in Indonesia."

WestPoint asks that the Committee clarify whether an importer can combine the new rules of origin set forth in subparagraphs 3(B) and 3(C) in origin determinations.

C. H.R. 3066 Unreasonably Discriminates Against Cotton Rich Sheets and Towels.

Subparagraph 3(C) of H.R. 3066 carves out an exception from the existing fabric forward rule of origin for sheets and towels, provided that these products are in chief weight man-made fibers. The majority of sheets sold in the United States are in chief weight cotton. Thus, these products will not be affected by subparagraph 3(C) of H.R. 3066.

If Congress is of the opinion that sheets and towels in chief weight man-made fibers undergo a change in origin by being subjected to dyeing and printing operations abroad, the same rule should apply to sheets and towels in chief weight cotton fibers. There is no basis for discriminating between products based on fiber composition. The products are produced, used and sold in the same manner. Yet, the proposed bill creates two different results. Neither result conforms with the stated

³ See, *Customs Headquarters Ruling 959547 (August 22, 1996); Customs Headquarters Ruling 959779 (October 24, 1996).*

purpose of the bill, which is to revert the rule of origin for these products to those in effect prior to the enactment of 19 U.S.C. § 3592 (cutting and substantial sewing).

When the United States signed the Uruguay Round Agreement, it entered into the Agreement on Rules of Origin. Article 2 of the Agreement requires that origin rules:

be administered in a consistent, uniform, impartial and reasonable manner.

Subparagraph 3(C) of H.R. 3066 does not comport with the United States' obligations under the Uruguay Agreement on Rules of Origin. It establishes two different rules for the exact same product, produced in the exact same manner. Such a result cannot be considered uniform, impartial or reasonable.

WestPoint submits that a single rule of origin should apply for determining the origin of sheets, and the rule of origin should not be based on fiber composition. Production methods alone should govern origin determinations, and Congress should consider reverting to the old origin rules, which were based on cutting and sewing. Such a rule should be adopted only after consultation with the home textile industry.

5. Conclusion

The rules for determining the origin of home textile products have changed three times within the last fifteen years. Each change requires that WestPoint adopt new production methods, and create new packaging materials and labels for the exact same product.

The existing rules of origin, and their administration, place U.S. origin fabric producers at a distinct disadvantage in the global marketplace. Congress should amend this result.

The proposed rules of origin set forth in H.R. 3066 do not revert the rules of origin for home textile products to those in effect prior to the enactment of 19 U.S.C. § 3592. Rather, H.R. 3066 creates disparate rules depending upon fibers used in the production of sheets and towels. Such a rule is inconsistent with the United States obligations under international treaties, and is arbitrary and unreasonable.

While WestPoint agrees that changes to the rules of origin are warranted and notes that the existing rules in effect in the United States are inconsistent with those in effect in other industrialized countries, it believes that the Committee should first consult with the home textile industry before it enacts such legislation.

Respectfully submitted by:

MARGARET R. POLITO
Attorney For WestPoint Stevens Inc.

Exhibit A

HQ 959501
August 9, 1996

CLA-2 RR:TC:TE 959501 CAB

CATEGORY: Classification

Mr. Ryden Richardson, Jr.
Carmichael International Service
533 Glendale Boulevard
Los Angeles, CA 90026-5097

RE: Country of origin of woven cotton fabric; Section 102.21(c)(2), Customs Regulations; Section 12.130(c)

Dear Mr. Richardson:

This is in response to your inquiry of March 4, 1996, requesting a country of origin determination for woven cotton fabric pursuant to Section 102.21, Customs Regulations. There were no samples provided for examination.

FACTS:

Cotton fabric is woven in the United States and exported in the greige state to Japan or South Korea. In either South Korea or Japan, the greige fabric is subject

to further processing in twelve different combinations. These combinations are as follows:

1. Scour and dye
2. Scour and print
3. Scour, dye and print
4. Scour, bleach and dye
5. Scour, bleach, dye and print
6. Scour, mercerize, sanforize and dye
7. Scour, bleach and print
8. Scour, bleach, mercerize, sanforize and print
9. Scour, mercerize, sanforize and print
10. Scour, mercerize, sanforize, dye and print
11. Scour, bleach, mercerize, sanforize and dye
12. Scour, bleach, mercerize, sanforize, dye and print

Following the above processing, the fabric will be returned as piece goods to the United States.

ISSUE:

What is the country of origin of the subject fabric?

LAW AND ANALYSIS:

Pursuant to Section 334 of the Uruguay Round Agreements Act (codified at 19 USC Section 3592), new rules of origin were effective for textile products entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. These rules were published in the Federal Register, 60 Fed. Reg. 46188 (September 5, 1995). Section 102.21, Customs Regulations (19 CFR Section 102.21), sets forth the general rules to determine country of origin. Thus, the country of origin of a textile product will be determined by a hierarchy of rules set forth in paragraphs (c)(1) through (c)(5) of Section 102.21.

Section 102.21(c)(1) sets forth the general rule for determining the country of origin of a textile or apparel product in which the good is wholly obtained or produced in a single country, territory, or insular possession. As the subject fabric is not wholly obtained or produced in a single country, territory, or insular possession, Section 102.21(c)(1) is inapplicable.

Section 102.21(c)(2) provides for instances where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section. Section 102.21(c)(2) states:

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

Section 102.21(e) states "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:"

5208-5212A change to heading 5208 through 5212 from any heading outside that group provided the change is the result of a fabric-making process.

As the fabric is not wholly obtained or produced in a single country, we must apply Section 102.21(c)(2) and the applicable requirement of Section 102.21(e) to the proposed scenario to determine the country of origin of the subject fabric. In this instance, the fabric is woven in the United States and it is then transported to South Korea or Japan where it is subject to various manufacturing operations in twelve different combinations. The fabric is classifiable in Heading 5208, HTSUSA. Pursuant to the applicable provisions of Section 102.21(e), the country of origin of the fabric is the United States, the country where the fabric was formed by a fabric-making process.

However, there is an exception for products from the United States that are sent abroad for processing. Section 12.130(c), Customs Regulations, provides that any product of the United States which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article. In this case, fabric woven in the United States is exported in its greige state to Japan or South Korea where it is subject to multiple processing operations that result in the fabric being improved in condition and advanced in value.

Section 12.130 which remains in effect was originally intended to be used to determine the country of origin of textiles and textile products for quota/visa requirements. In Treasury Decision ("T.D.") 90-17, issued February 23, 1990, Customs announced a change in practice and position. This change resulted in Customs using Section 12.130 for quota, duty, and marking purposes when making country of origin determinations for textile goods. Therefore, in accordance with T.D. 90-17 and Section 12.130(c), the country of origin of the subject fabric for quota, marking, and duty purposes is Japan or South Korea, the country where the additional processing occurs.

With respect to your request as to advice on the country of origin labeling requirements for the subject merchandise, Customs recently ruled in Headquarters Ruling Letter (HRL) 559625, dated January 19, 1996, that the origin rules set forth in 19 USC Section 3592 govern the labeling requirements of textile and apparel products for purposes of the country of origin marking requirements of 19 U.S.C. § 1304. Also as noted above, Section 12.130(c) is still considered to be applicable for quota, marking, and duty purposes. As a result, the country of origin for the subject fabric is Japan or South Korea and it must be so marked pursuant to 19 U.S.C. § 1304. However, it is important to note that the holding in HRL 559625 is currently under review regarding the manner and specificity of the marking requirements.

You also inquire about the documentation required at entry. You ask the following:

1. Will entry require presentation in the entry summary of a textile visa issued by the government of the country where processing, as outlined in 1 through 12 above, has occurred?

Entry will require a textile visa from the country of origin, in this instance, either, South Korea or Japan in the entry summary.

2. What country of origin should be identified in the label attached to the returning piece goods, U.S.A. or the country wherein processing occurred?

As stated above, pursuant to 19 U.S.C. § 1304, the country of origin of the subject fabric is South Korea or Japan and the fabric may be marked "Made in South Korea" or "Made in Japan."

3. Other than a visa, will entry documents other than a commercial invoice and packing list be required, e.g., a country of origin declaration, as described in 19 C.F.R. § 12.130(f)?

In accordance with 19 C.F.R. § 12.130(f), as the subject fabric is an imported textile subject to section 204 Agricultural Act of 1956, as amended, it should be accompanied by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) of Section 12.130, including a country of origin declaration.

HOLDING:

The country of origin of the subject fabric is Japan or South Korea.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 C.F.R. § 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

Should it be subsequently determined that the information furnished is not complete and does not comply with 19 C.F.R. § 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 C.F.R. § 177.2.

Sincerely,

