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Modalities for Discussions on Cumulation of Origin under Annex 2.2, Article 13

AMIR II Achievement of Market-Friendly Initiatives and Results

June 2005

This document was produced for review by the United States Agency for International Development. It was prepared by Chemonics International Inc.

JORDAN AMIR II

Achievement of Market-Friendly Initiatives and Results

Contract No. 278-C-00-02-00210-00

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Contract No. 278-C-00-02-00210-00
Contractor Name: Chemonics International, Inc.
USAID Cognizant Technical Office: Office of Economic Opportunities
USAID/Jordan
Date of Report: June 2005
Document Title: Jordan-U.S. Free Trade Agreement: Modalities for Discussions on
Cumulation of Origin under Annex 2.2., Article 13
FINAL
Authors' Names: Brian O'Shea/Chemonics
Activity Title and Number: Achievement of Market-Friendly Initiatives and Results Program
(AMIR Program)
PSPI Component, "Accumulation of Origin Discussion Paper,"
Task No. 531.06

Jordan – U.S. Free Trade Agreement

**Modalities for Discussions
on Cumulation of Origin
under Annex 2.2, Article 13**

Final Report
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Data Page

Name of Component:	Private Sector Policy Initiative
Authors:	Brian O'Shea/Chemonics
Practice Area:	Trade and Investment
Service Offering:	N/A
List of Key Words Contained in Report:	Cumulation, Jordan-US Free Trade Agreement, rules of origin

Abstract

The Jordan U.S.-Jordan Free Trade Agreement authorizes the parties to enter into discussions as to the extent to which inputs from territories that are contiguous to Jordan might be used by producers to qualify their exports under the agreement's rules of origin. The purpose of this report is to suggest the "modalities" or framework issues that Jordan might propose to guide these discussions.

Abbreviations and Acronyms

FTA	free trade agreement
JUSFTA	Jordan-US Free Trade Agreement
MENA	Middle-East and North Africa
MFN	most-favored nation
WTO	World Trade Organization

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Executive Summary

The Jordan-United States Free Trade Agreement authorizes the two governments to enter into discussions to determine the extent to which Jordanian or U.S. producers might use materials produced in territories “contiguous” to Jordan to comply with JUSFTA origin rules.

At present, to qualify for U.S. duty free treatment, Jordanian producers must be able to certify that their goods are products of Jordan and at least 35% of the value of the goods is attributable to Jordan or U.S. content. An agreement to allow Jordan to “accumulate origin” with other countries or territories in the region would provide Jordanian producers with the possibility of greater flexibility in sourcing qualifying materials and other inputs for manufacturing, and expanded export trade with the U.S. under the JUSFTA.

To assist the government of Jordan prepare for these negotiations, this paper proposes a set of “modalities” or framework issues to guide the discussions on cumulation of origin. The precise modalities that the parties ultimately accept can have a significant impact on the shape and content of the final agreement. Accordingly, Jordan will wish to frame the modalities in terms of the objectives it hopes to achieve.

Before settling on any specific modalities, it will be important for the government to consider and define its objectives. For purposes of this paper, and subject to validation or revision by the government, the following negotiation objectives have been assumed:

1. The cumulation rule should be broad in scope, both in terms of Jordan’s potential cumulation-country partners and product coverage.
2. The cumulation rule should allow Jordanian producers to aggregate fully production and inputs from cumulation countries with their own for purposes of complying with JUSFTA 35% local content *and* country of origin rules.
3. Rules for qualifying for JUSFTA duty-preferences should not be made more complex or restrictive than currently.

Based on these objectives, this report proposes 12 modalities to guide Jordan’s discussions with the United States on cumulation of origin, which fall under one of three main topics: (1) scope issues, (2) technical rules, and (3) implementation issues. There is a priority and interdependency among the three groups of issues; that is, decisions on scope issues will determine technical rules that must be agreed, and the technical rules agreed will determine the implementation issues to be discussed.

Modalities for discussions on **scope** of an agreement on cumulation are as follows:

- Whether Jordan may accumulate origin with any Middle East and North American (MENA) country that has concluded a comprehensive free trade agreement with the United States.
- Whether any products must be excluded from the cumulation rule.

- Whether producers in the cumulation countries (*e.g.*, Morocco, Bahrain or Israel) will be permitted to use inputs from Jordan to qualify *their* exports to the U.S. for preferential treatment under those countries FTAs with the United States.
- Whether producers in the United States will be provided reciprocal treatment. For example, will U.S. producers also be permitted to use inputs from the cumulation countries to qualify their exports to Jordan for duty-free treatment.

The following are proposed framework issues for discussions related to **technical rules**:

- Whether JUSFTA origin rules may be used to determine whether materials imported from cumulation countries can be considered “originating”
- Should there be any limit on the extent to which materials obtained from cumulation countries can be counted toward the 35 percent local-content requirement? For example, under the current JUSFTA, materials sourced from the U.S. can be used, but only up to 15 percent of the value of the exported product.
- Whether Jordan (or U.S.) producers may use inputs from cumulation countries to meet both the JUSFTA “product of” origin rule and the 35 percent local content rule.
- What rules will be used to identify country of origin of a good that is produced in two or more cumulation countries for purposes of determining which preferential tariff rate applies.
- Whether the direct transport rule must be modified.

Finally, the following are proposed issues for discussions on **implementation** of an agreement on cumulation of origin:

- What changes must be made to origin declaration data requirements to accommodate preference claims based on cumulation.
- Whether any changes are required to existing legal authority to allow Customs verification of origin claims based on cumulation.
- Are provisions on training and capacity building required, in view of any new or different obligations required of Jordan Customs to implement the cumulation rule

It is important to note that certain of these issues proposed for discussion are beyond the scope of the literal terms of the JUSFTA. In particular, the JUSFTA authorizes discussions on cumulation with “contiguous territories” only; that is, Israel, the West Bank/Gaza, and other neighboring countries. It is assumed that Jordan seeks a broader cumulation rule that would include other MENA countries (at a minimum). Similarly, the JUSFTA suggests that inputs from cumulation countries could be used for the limited purpose of assisting Jordanian producers meet the JUSFTA 35% local content rule. Jordan, however, presumably seeks a rule that would allow its producers to aggregate production fully within the cumulation region to qualify exports under both the JUSFTA 35% local content and the “product of” origin rules.

Therefore, a challenge that Jordan will face is to bring these issues within the JUSFTA legal framework. One possible means to do so is through the authority given by the JUSFTA to Jordan and the United States to agree on interpretations of the terms of the agreement (this authority is found in Articles 14(3) and 15(2)(d) of the JUSFTA). Through this mechanism, the parties might agree to an interpretation of the relevant JUSFTA provisions that would enable the expansive cumulation rule that Jordan seeks. The alternative to interpretation would be an amendment of the agreement. This, presumably, is the less preferred approach, as it would likely involve the complexities of legislative or parliamentary approvals.

The JUSFTA provides only for “one-way” cumulation; that is, it allows Jordanian producers to take inputs from other countries to qualify Jordan exports for JUSFTA preferences. This report, however, proposes that the parties also consider in their discussions the possibility that Jordan be permitted to supply raw materials and intermediates to its cumulation partners (*e.g.*, Morocco, Bahrain, or Israel) to qualify *their* exports under *their* respective free trade agreements with the United States.

Authority for Morocco or Bahrain’s use of Jordan inputs to qualify their exports cannot be found in the JUSFTA, regardless how broadly interpreted. *However*, the Bahrain and Morocco agreements with the United States do provide the authority to enable just such regional cumulation. Although inclusion of this point on the agenda would enlarge (and possibly complicate) the cumulation discussions with the United States, as it implies participation of Morocco, Bahrain or others from the MENA region in the discussions, it could have an important positive impact on MENA regional integration and expansion of the region’s trade with the United States, both objectives of U.S. trade policy.

I. Introduction

The purpose of this paper is to propose an outline of issues or “modalities” of discussions between Jordan and the United States on cumulation of origin under Article 13 of Annex 2.2 of the Jordan-United States Free Trade Agreement (JUSFTA).¹

Article 13 of Annex 2.2 states:

“13. Within six months of the entry into force of this agreement, the Parties shall enter into discussions with a view to deciding the extent to which the cost or value of materials which are products of a territory contiguous to Jordan may be counted in the appraised value of the Article for purposes of determining the 35 percent content requirement under this Agreement.”

The modalities of discussions under Article 13 of Annex 2.2, once agreed between the United States and Jordan, will be the starting point or the framework for negotiations, and will thus have an important impact on the structure and content of the final agreement on cumulation. For that reason, in order to influence the shape of that final agreement, presumably Jordan will wish to frame the issues for discussions consistent with its objectives.

JORDAN’S NEGOTIATION OBJECTIVES

The proposed modalities are thus framed in terms of objectives that Jordan may wish to achieve in negotiations. Obviously, it is for the government to define its own objectives. However, in order to propose the modalities, I have made certain assumptions as to what those objectives might be, which are as follows:

- The cumulation rule should be broad in scope, both in terms of Jordan’s potential cumulation-country partners and product coverage.
- The cumulation rule should allow Jordanian producers to aggregate fully production and inputs from cumulation countries with their own for purposes of complying with JUSFTA 35% local content *and* country of origin rules.
- Rules for qualifying for JUSFTA duty-preferences should not be made more complex or restrictive than currently.

The government should validate these objectives and consider whether there are others it wishes to achieve. That is an important initial exercise, and will have an impact on the modalities Jordan may wish to propose for the discussions under Article 13 of Annex 2.2.

¹ This report is based on a detailed “concept” paper on cumulation of origin under the JUSFTA presented to the government by the USAID-funded AMIR Program in January 2005. See Jim Robertson & Brian O’Shea, *Accumulation of Origin under the Jordan-United States Free Trade Agreement* (January 2005). The issues I have proposed for discussions under Article 13 of Annex 2.2 here are explained in greater detail in that concept paper.

MODALITIES – THREE CATEGORIES

The proposed modalities are organized into three broad areas of discussion:

- Scope issues
- Rules issues
- Implementation issues

A reason for separating the issues for discussions into these three particular groups is to indicate a rough priority. As discussed below, the outcome of discussions between Jordan and the United States on the scope issues will have an impact on rules issues, and decisions the parties make on rules will likewise have an impact on the implementation issues.

A second reason for the division is to suggest that, although there is overlap, the three main areas of discussion might require specific expertise or inputs from within the government or the trade and business community. For example, discussions on scope largely involve questions of trade policy, whereas discussions on rules concern technical questions about rules of origin, and discussions on implementation will involve largely customs administrative questions.

LEGAL BASIS FOR EXPANSIVE CUMULATION RULE

A question that will likely arise in discussions under Article 13, Annex 2.2 is whether the current terms of the JUSFTA can support as broad cumulation rule as Jordan seeks, or whether amendment of the JUSFTA would be required.

That question will be an important part of discussions on two issues in particular, where Jordan's assumed objectives stretch beyond the literal terms of Article 13 of Annex 2.2. These are: (1) the countries with whom Jordan will be permitted to cumulate origin and (2) the use of a "full cumulation" rule.

The literal terms of Article 13 of Annex 2.2 (the JUSFTA provision authorizing discussions on cumulation) are narrow. With respect to countries, the article refers only to cumulation with "contiguous territories." This suggests that cumulation might be limited to those territories that share a border with Jordan, such as Israel and the West Bank. Similarly, Article 13, Annex 2.2 indicates that inputs from cumulation countries could be used to comply with the JUSFTA 35% local content rule; no reference is made to use of production in cumulation countries to qualify exports under the JUSFTA country of origin ("product of") requirement. This suggests that "full cumulation" may be precluded.

However, it is important to note that the JUSFTA provides authority for the parties themselves to agree on interpretations of the terms of the agreement. Specifically, it authorizes Jordan and the U.S. to meet to develop "interpretative" materials on the

implementation of Annex 2.2.² Under that authority, the parties might agree that, in light of JUSFTA stated objectives of expanded trade and regional cooperation, the phrase “contiguous territories” in Article 13 of Annex 2.2 should be interpreted to mean “countries of the adjoining region,” and thus allow cumulation with other Middle East countries which are not necessarily geographically adjacent to Jordan.

If, through this JSUFTA interpretative mechanism, Jordan and the United States cannot agree to a broad interpretation of Article 13 of Annex 2.2 to accommodate an expansive cumulation rule, the alternative is a formal amendment of the agreement.

Article 15 of the JUSFTA provides the Joint Committee authority to consider and adopt amendments to the agreement, subject, however, “to the domestic legal requirements of each Party.”³ As these “domestic legal requirements” may include a required legislative or parliamentary approval, amendment may be more complex and therefore less preferred than the interpretative approach.

²There are two provisions in the JUSFTA which provide this authority to interpret. Article 14(3) of the agreement, which concerns rules of origin and cooperation in customs administration, states:

“The Parties, within 180 days after the entry into force of this Agreement, shall enter into discussions with a view to developing interpretative and explanatory materials on the implementation of Annex 2.2.”

Similarly, Article 15(2)(e), which authorizes establishment of a Joint Committee, states that the Joint Committee’s functions shall include

“develop[ment of] guidelines, explanatory materials, and rules on the proper implementation of this Agreement, as necessary, and particularly: (i) guidelines and explanatory materials on the implementation of Annex 2.2.[.]”

³ Article 15(2)(d) of the JUSFTA provides:

“2. The functions of the Joint Committee shall include, *inter alia*,

...

(d) considering and adopting any amendment to this Agreement or modification to the commitments therein, provided that the adoption of such amendment or modification shall be subject to the domestic legal requirements of each Party[.]”

II. Modalities

A. SCOPE ISSUES

1. Cumulation Countries

- **Discussions should aim to allow cumulation of origin with Middle East and North American (MENA) countries that have concluded comprehensive free trade agreements with the United States.**

JUSFTA Annex 2.2, Article 13 provides for the possibility of cumulation with “contiguous territories”. Applied literally, this language would limit Jordan’s potential cumulation partners to Israel, West Bank/Gaza, Iraq, Saudi Arabia, and Syria. As previously indicated, however, Articles 14(3) and 15(2)(e) of the JUSFTA authorize the parties to agree to interpretations of the agreement, including the terms of Article 13 of Annex 2.2.⁴ The discussions here, therefore, should include whether this authority allows the parties to broadly interpret Article 13 of Annex 2.2 to allow cumulation with countries in the Middle East region.

Since negotiation of the JUSFTA, the United States has defined a “Middle East Free Trade Initiative.” That initiative supports cumulation linkages between Jordan and other countries of the Middle East and North Africa who have or will enter into comprehensive free trade agreements with the United States.⁵ Moreover, the two MENA free trade agreements that the United States has negotiated since the JUSFTA specifically provide authority to negotiate agreements on cumulation with other countries of the region, which would include Jordan.⁶

Accordingly, consistent with U.S. regional integration objectives, the discussions on cumulation under the JUSFTA should seek to allow inputs from the MENA countries or territories that have entered or will enter into free trade agreements with the United States to qualify as originating materials. At present, these countries and territories consist of Israel, Bahrain, and Morocco.

Decisions on countries or territories included will likely be subject to an agreement on a legal framework to allow Customs verification of origin claims based on inputs from those countries and territories (see discussion on Implementation Issues, below).

⁴ See discussion on Legal Basis for Expansive Cumulation Rule at pages 5-6, above.

⁵ This U.S. initiative, and its implications for an accumulation rule, was discussed in *Accumulation of Origin under the Jordan-United States Free Trade Agreement* at page 13.

⁶ For example, Article 5.13 of the U.S-Morocco FTA provides

“ARTICLE 5.13: REGIONAL CUMULATION

At a time to be determined by the Parties, and in the light of their desire to promote regional integration, the Parties shall enter into discussions with a view to deciding the extent to which materials that are products of countries in the region may be counted for purposes of satisfying the origin requirement under this Agreement as a step toward achieving regional integration.”

2. Product Exclusions

- **Discussions should determine whether any products must be excluded from the cumulation rule.**

Jordan may wish to take the position that the cumulation rule should be as broad in product coverage as the coverage of the free trade agreements between the United States and Jordan or between the United States and the cumulation countries. If no product is excluded from duty-free treatment under these agreements (and none is), then no products should be excluded from the cumulation rule.

On the other hand, the United States or one of the cumulation countries may have trade policy or political reasons to limit the cumulation rule. For example, under the proposed Central American Free Trade Agreement, the United States limited diagonal cumulation to wearing apparel products.⁷

If specific product exclusions are required, then these products should be defined in a negative list, for example by commodity code and product name.

3. Cumulation Countries Use of Inputs from Jordan

- **Discussions should determine whether cumulation countries may use inputs from Jordan to qualify their exports for preferential treatment under their respective FTAs with the United States.**

In order to achieve fully the regional integration objectives underlying cumulation rules, producers in cumulation countries (*i.e.*, Israel, Morocco, or Bahrain) should be permitted to use raw materials or intermediates from Jordan to qualify their exports to the United States for preferential treatment under their respective free trade agreements with the United States. It is clearly in Jordan's interests to be a preferential *supplier* of raw materials and intermediate goods to cumulation partners, in addition to the ability to source inputs from those countries.

This point of discussion is likely outside the scope of the terms of the JUSFTA. Article 13, Annex 2.2 of the JUSFTA provides only for possibility of cumulation countries supplying inputs to Jordan for purposes of qualifying exports under the JUSFTA. It does not contain any provision that would allow other countries use of inputs from Jordan for purposes of qualifying those countries exports under their free trade agreements with the United States. Rather, if a legal basis for this cumulation possibility can be found, it will be under the terms of the free trade agreements these countries have with the United States. In fact, certain of the MENA countries' FTAs with the United States *do* provide a legal authority to allow use of Jordan inputs.⁸

⁷ See *Accumulation of Origin under the Jordan-United States Free Trade Agreement* at page 27. On the other hand, under the Caribbean Basin Initiative, there are no product exclusions on accumulation among beneficiary countries.

⁸ United States free trade agreements with Morocco and Bahrain specifically provide for the possibility of negotiations to allow inputs from countries in the region to be used to qualify exports from those countries for U.S. duty-free treatment. See Article 5.13 Morocco FTA; Article 4.13 Bahrain FTA. The U.S.-Israel FTA does not include a similar provision.

Therefore, while recognizing that other countries use of Jordan's inputs to qualify under their respective FTAs with the United States falls outside the scope of the JUSFTA, Jordan may nevertheless wish to propose this issue for the discussions on cumulation, on grounds that it has an important bearing on regional integration and expansion of regional trade with the United States, and it is authorized in any event by U.S. agreements with Jordan's potential cumulation partners.

Discussion of this issue will require participation of these MENA countries (e.g., Israel, Bahrain, and Morocco), and consideration of the extent to which their agreements with the United States can allow use of Jordan inputs to qualify their exports for duty preferences.

4. Reciprocity with United States

- **Discussions should aim to allow producers in Jordan and the United States to use inputs from cumulation countries on the same terms with respect to exports to the other country.**

As a condition for allowing Jordan to accumulate inputs from other countries or territories to qualify for U.S. duty free treatment, the United States presumably will require reciprocal treatment vis-à-vis U.S. exports.⁹ This discussion may have two aspects, depending upon the degree of reciprocity required.

First, reciprocity will likely require an agreement that U.S. producers will be allowed to use inputs from the cumulation countries or territories to qualify their exports to Jordan under the JUSFTA, under the same conditions that Jordan producers will be permitted to accumulate origin with respect to exports to the United States.

Depending on the outcome of discussions on the scope issues above (particularly, the discussion under Cumulation Countries Use of Inputs from Jordan), reciprocity may further require agreement that U.S. inputs must be allowed to qualify Jordanian exports to the cumulation countries for duty-free treatment under agreements between Jordan and that cumulation country.¹⁰ This might mean, for example, that U.S. inputs would be considered originating materials when used in the manufacture of a product in Jordan that is exported to Morocco for purposes of the free trade agreement between Jordan and Morocco.

B. DISCUSSIONS ON RULES

1. Eligibility of Materials

- **The rules to determine what materials imported from cumulation countries can be considered “originating” must be agreed.**

⁹ This degree of reciprocity was required for the diagonal accumulation rule under the proposed U.S.-Central American Free Trade Agreement. See *Accumulation of Origin under the Jordan-United States Free Trade Agreement* at pages 27 and 44.

¹⁰ Jordan apparently has entered into free trade agreements with Bahrain and Morocco, but not Israel.

The value of parts, materials and components that Jordanian producers import from cumulation countries such as Morocco, Bahrain or Israel will be permitted to be used to help qualify Jordan exports under JUSFTA origin rules, only if the imported materials “originate” in one of those cumulation countries. Presumably, materials that are produced in a third country and simply transshipped through Morocco to Jordan (for example) will not be permitted to qualify.

The question to be addressed in discussions is what rules will be used to determine whether materials “originate” in one of the cumulation countries.¹¹ Possible options include:

- Imported materials used by Jordanian producers “originate” in the cumulation country (Morocco, for example), if the materials comply with rules of origin defined by *that* country’s free trade agreement with the United States (*i.e.*, the U.S.-Morocco Free Trade Agreement).
- Imported materials “originate” in the cumulation country if the materials comply with the JUSFTA rules of origin. That is, any intermediate product that Jordan sources from a cumulation country (Israel, Morocco, Bahrain, *etc.*) must be shown to originate in that country when applying the *Jordan-U.S. FTA origin rules*.
- Imported materials might be said to originate in the cumulation country if the materials comply with *either* the rules of origin defined by that country’s free trade agreement with the United States *or* the JUSFTA rules of origin.

There is precedent under U.S. free trade agreements for the second option, and this may be simplest for Jordanian producers to apply.¹² While the third option may allow Jordanian producers more flexibility in qualifying imported materials under the JUSFTA, it will be more complex in administration and enforcement.

2. Quantitative Limitations on Use of Cumulation-Country Inputs

- **Discussions should define any limit on the extent to which the cost or value of materials imported from cumulation countries may be used to meet the 35 percent local-content requirement.**

Under the JUSFTA, Jordanian producers may count toward the 35 percent local-content requirement the cost or value of any materials that originate in the United States, but up to a limit of 15 percent of the customs value of the finished export product. A similar limitation on use of U.S. inputs appears in the U.S.-Israel FTA, but *not* in the U.S.-Morocco or U.S.-Bahrain FTAs, where producers in those countries can use the full value of such U.S. sourced-materials to qualify their exports to the United States.

¹¹ This question arises only because of certain limited differences in the rules of origin under the JUSFTA and the rules of origin under the U.S. FTAs with the possible accumulation partners – Israel, Bahrain and Morocco. These differences appear in the origin rules for the textile and apparel sector and a small number of other products. See *Accumulation of Origin under the Jordan-United States Free Trade Agreement* at pages 34 to 40.

¹² The precedent is the proposed U.S. free trade agreement with Central American countries. See *Accumulation of Origin under the Jordan-United States Free Trade Agreement* at page 27.

A question to be addressed in discussion on cumulation is whether a quantitative limitation should be applied to originating materials that Jordanian producers will import from cumulation countries.

The JUSFTA 15 percent limitation on use of U.S. materials was presumably intended, at least in part, to encourage local sourcing to build capacity of local producers of raw materials and intermediates, rather than reliance on developed-market suppliers in the United States. The same development rationale underlying a cumulation limitation would not appear to apply to Jordanian producers sourcing inputs from regional producers.

A by-product of discussions on cumulation with Morocco and Bahrain could be elimination of the 15 percent limitation on use of U.S. inputs under the JUSFTA. Jordan may wish to take the position that it should not be disadvantaged on sourcing vis-à-vis its cumulation partners Morocco and Bahrain, who do not have such a limitation on inputs from the U.S. under their free trade agreements.¹³

3. Full Cumulation

- **Discussions should aim for agreement to allow Jordan or U.S. producers to apply inputs from cumulation countries toward both the JUSFTA “product of” origin rule and 35 percent local content rule.**

Article 13 of Annex 2.2 indicates that discussions will aim to allow Jordan producers to use products of cumulation countries for purposes of meeting the 35 percent local content test. However, Jordan may wish to take the position that negotiations should aim for broader use of cumulation based on a “full cumulation” model. Full cumulation would allow producers to aggregate production processes carried out in any cumulation countries or territories to comply with either or both the JUSFTA “product of” and the 35 percent value-content rules.

Full cumulation allows more flexibility for producers, and enables a deeper integration in the region by providing for the possibility of more fragmentation of production processes among members of the regional group.¹⁴

Although Article 13 of Annex 2.2 does not specifically authorize “full cumulation,” as indicated previously the JUSFTA authorizes the parties to agree on interpretations of the terms of the agreement, including Article 13 of Annex 2.2.¹⁵ The discussions here should include whether a broader interpretation could be given to Article 13 of Annex 2.2 to allow full cumulation.

4. Country of Origin

- **Discussion may be required on rules to identify country of origin of a good that is produced in two or more cumulation countries for purposes of determining which preferential tariff rate applies.**

¹³ See *Accumulation of Origin under the Jordan-United States Free Trade Agreement* pages 44 to 45 for discussion.

¹⁴ See *Accumulation of Origin under the Jordan-United States Free Trade Agreement* pages 22 to 26 for discussion of differences between full, diagonal and bilateral accumulation rules.

¹⁵ See pages 4-5, above.

If full cumulation is agreed, a technical question may arise as to which U.S. preferential duty rate applies: the rate applicable to goods under the JUSFTA schedule, or the rate applicable to goods of the third country under its tariff reduction schedule with the United States.

For example, a product may have been manufactured in Morocco, but shipped to Jordan for minimal, tail end processing or finishing operations before it is exported to the United States. If a full cumulation rule is applied, this export would qualify as a Jordan origin, even though it is largely the result of production process and materials made in Morocco. This problem arises because of difference in timing of elimination of tariffs under the different agreements: the U.S. tariff applicable to products of Jordan may be higher (or lower) than that applicable to products of Morocco.

In terms of administrative simplicity, the rule that would seem to best suit Jordan is the rule used in European Union FTAs: the applicable rate is that which applies to the country where the exported product was last worked or processed. The competing rule is that used by the United States in the NAFTA, which determines the rate using non-preferential rules of origin.¹⁶

5. Direct Transport Rule

- **Discussion may be required on modification of the direct transport rule.**

Under the JUSFTA, qualifying products must be shipped directly from Jordan to the United States (or vice versa) with minor exceptions to allow transshipment, storage or minor operations under customs control in third countries. If the good is otherwise further processed in a third country en route to the United States, even to a minor extent, then preferential treatment is lost.

This rule, as now written, could preclude the possibility of preferential treatment for a product manufactured in Jordan, shipped to Morocco for minor finishing, and then exported to the United States, even though the export is a product of Jordan and all value-added comes from Jordan or Morocco, the cumulation partner.

Discussions under Article 13 of Annex 2.2 may be required to examine the direct transport rule to ensure that processing done in one of the any of the cumulation does not technically disqualify the product from preferential treatment.

C. IMPLEMENTATION ISSUES

1. Documentation Requirements

- **Origin declaration data requirements must be revised to accommodate preference claims based on cumulation.**

¹⁶ These options are discussed in *Accumulation of Origin under the Jordan-United States Free Trade Agreement* at pages 30 to 32.

The JUSFTA requires importers to be prepared to submit a declaration to Customs in the importing country containing certain information about the source and production or manufacture of the imported product and its components.

At present, the declaration requires importers to provide information about production operations undertaken in Jordan or the United States, and considers components produced, or processes undertaken, in any other country to be “foreign” and therefore non-qualifying.

Negotiations must therefore aim for an agreed modification of the current declaration requirements defined in the JUSFTA to align to any agreement reached on cumulation rules. Based on Morocco and Bahrain FTA models, this may require that importers declare (and to maintain supporting records for five years) information about cost or value of products or materials imported from cumulation countries, as well as information concerning processing undertaken in the cumulation countries (including nature and costs of processing), if they claim duty-free treatment based on cumulation.

The extent of the modification required to the existing JUSFTA origin declaration data will depend on the results of the negotiations on rules, particularly the discussion on full cumulation.

2. Customs Verification of Claims

- **Discussions should include whether changes are required to existing legal authority to allow Customs verification of origin claims based on cumulation.**

Under the JUSFTA, the United States and Jordan agree to

“[A]ssist each other in obtaining information for the purpose of reviewing transactions made under this Agreement in order to verify compliance with the conditions set forth in this Agreement.”

A similar authority must exist to allow the United States (and Jordan, depending on the outcome of discussions on reciprocity noted above) to verify origin claims based on cumulation. That is, the United States (or Jordan) should have agreements with cumulation partner countries or customs administrations (Morocco, Bahrain, Israel) that provides legal authority to obtain information to verify whether a claim, for example, that a particular material or component used by a Jordanian manufacturer was in fact made in Morocco or Bahrain or Israel.

Accordingly, discussions should include whether the United States and Jordan, under agreements with potential cumulation partners (including, for example, free trade agreements or customs mutual assistance agreements), have the possibility to obtain this information to verify compliance, or whether such an agreement must be negotiated to allow for verification of origin claims based on cumulation.

3. Training/Capacity Building

- **Discussions on training and capacity building may be required, depending upon new or different obligations required of Jordan Customs to implement the cumulation rule**

If the Jordan Customs Department is required, as a result of the discussions under Article 13 of Annex 2.2, to assume new obligations under the JUSFTA, it may be appropriate to include as a discussion the need and kind of technical support that the United States might provide. In this regard, it can be noted that under both the U.S.-Morocco and U.S.-Bahrain FTAs, there is provision for supply of U.S. technical assistance to support implementation of certain of the customs administrative requirements of those agreements.¹⁷

¹⁷ See, for example, Article 6.11 of Chapter Six (Customs Administration), U.S.-Morocco FTA. That section provides possibility of certain U.S. technical assistance to Morocco Customs Department to assist in implementation of an advance rulings program:

“1. Within 120 days after the date of entry into force of this Agreement, the Parties shall consult and establish a work program on procedures that Morocco may adopt to implement Article 6.10 [an agreement by Morocco to implement an advance rulings program] and shall consult on technical assistance that the United States may provide to assist Morocco in that endeavor.”

Both Morocco and Bahrain agreed to a number of customs administrative reforms – relating to use of risk assessment in customs control, automation, immediate release, express shipments, *etc.* – that are not found in the JUSFTA.

III. Conclusion

This paper proposed 12 issues or “modalities” to guide Jordan’s discussions with the United States on a cumulation rule under JUSFTA Annex 2.2., Article 13.

The 12 modalities proposed fall within three main groups: scope issues, rules issues, and implementation issues. Scope issues are highest in priority, as decisions on scope will determine the issues that must be discussed on rules and implementation.

The issues proposed are based on certain assumptions regarding Jordan’s objectives in the negotiations, which assumptions the government should validate. Generally, it has been assumed that Jordan seeks a broad and expansive cumulation rule in terms of cumulation partners, product scope, and uses to which cumulation inputs can be used to qualify Jordan’s exports under the JUSFTA.

There is a question whether the terms of the current text of the JUSFTA would support a cumulation rule as broad as that which Jordan seeks. The narrow, literal terms of Article 13 of Annex 2.2 – the provision that authorizes discussions on cumulation – would seemingly limit cumulation countries to those countries with whom Jordan shares a border, and would allow inputs from cumulation countries to be used only to satisfy the 35 percent local-content rule of the JUSFTA. This paper has noted that there are two mechanisms in the JUSFTA that might be used to overcome those limitations. The first, and presumably the preferred method, is through the parties’ authority given under Articles 14(3) and 15(2)(e) of the JUSFTA to agree to interpretations of the agreement. Under that authority, the parties might agree to broad interpretations of Article 13 of Annex 2.2 that would allow cumulation within the MENA region, and full cumulation. The alternative mechanism is amendment of the JUSFTA itself.

Finally, Jordan would benefit if able to supply raw materials and intermediates to its cumulation partners (*e.g.*, Morocco, Bahrain, or Israel) to qualify *their* exports under *their* respective free trade agreements with the United States. While this cumulation possibility is not within the scope of the JUSFTA, the United States agreements with Bahrain and Morocco do provide the authority to enable just such regional cumulation. On that basis, and because of its importance to regional integration and expanded trade with the United States, Jordan may wish to propose discussion of this aspect of cumulation as well. If included as a point of discussion, it likely will require participation of Morocco, Bahrain and other cumulation partners.