

REPORT (1997) OF THE TEXTILES MONITORING BODY

1. This report is presented by the Textiles Monitoring Body (TMB) pursuant to the decision adopted by the General Council on 15 November 1995 on the procedures for an annual overview of WTO activities and for reporting under the WTO (WT/L/105). It covers the period 2 October 1996 to 12 November 1997. During this period, the TMB held 19 meetings. The reports of these meetings are contained in G/TMB/R/19 to 37.<sup>1</sup>

2. Pursuant to Article 8.11 of the Agreement on Textiles and Clothing (ATC), the TMB adopted on 24 July 1997 a comprehensive report on the implementation of the ATC during the first stage of the integration process (G/L/179). This report, which was submitted to the Council for Trade in Goods in order to assist in its major review of the implementation of the ATC, covers in detail most of the notifications which were reviewed or the issues that were addressed by the TMB during the reporting period.

3. The present report does not go into the details of the activities of the TMB during the period covered but rather consists of an inventory of the work carried out by the TMB.

Notifications under Article 2.1 of the ATC: Quantitative Restrictions within Bilateral Agreements Maintained under Article 4 or Notified under Article 7 or 8 of the MFA in Force on the Day before the Entry into Force of the ATC

4. The TMB reviewed under Article 2.21 additions to the notifications received under this provision from Canada and the United States, following Bulgaria's accession to the WTO (G/TMB/R/24 and 26) and from the United States, following the consent by the United States to the application between the United States and Romania of the WTO Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 (G/TMB/R/30).

Notifications under Articles 2.6 and 2.7(b) of the ATC: First Stage of Integration into GATT 1994 of Products Covered by the ATC by Members which have, Pursuant to Article 6.1, Retained the Right to Use the Provisions of Article 6

5. The TMB reviewed under Article 2.21 the notifications made by Egypt (G/TMB/R/19), Liechtenstein (G/TMB/R/22) and South Africa (G/TMB/R/22). It also reverted to its review of the notifications made by Israel (G/TMB/R/21) and Saint Kitts and Nevis (G/TMB/R/23).

Notifications under Articles 2.8(a) and 2.11 of the ATC: Second Stage of Integration into GATT 1994 of Products Covered by the ATC

6. The TMB reviewed under Article 2.21 the notifications made pursuant to Articles 2.8(a) and 2.11 by Bolivia, Costa Rica, the Czech Republic, Egypt, the European Community, India, Japan, Malaysia, Malta, Mauritius, Peru, the Philippines, Romania, Sri Lanka, the United States and Venezuela

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<sup>1</sup>The Report of the 37th Meeting will be issued upon its adoption by the TMB.

(G/TMB/R/30), Norway and Pakistan (G/TMB/R/31), Canada (G/TMB/R/32), Morocco (G/TMB/R/33), Argentina, Tunisia and Uruguay (G/TMB/R/35), Colombia, El Salvador, the Slovak Republic and Switzerland (G/TMB/R/37). Subsequently, the TMB took note of corrections made by Norway to its second stage integration programme, and that the import volume of the products integrated for the second stage of integration by both Pakistan and the Philippines, as earlier noted by the TMB, remained unchanged (G/TMB/R/36).

7. The TMB started its review under Article 2.21 of the programmes of integration notified pursuant to Articles 2.8(a) and 2.11 by Brazil, the Dominican Republic, Guatemala, Hungary, Indonesia, Korea, Liechtenstein, Mexico, Nicaragua, Poland, Saint Kitts and Nevis, Slovenia, South Africa, Thailand and Turkey and decided to revert to its review of these programmes at a subsequent meeting, once further information or clarification is received from them. In the meantime, in pursuance of Article 2.11, the TMB has circulated these notifications to WTO Members.

Notification under Articles 2.8(b), 2.10 and 2.11 of the ATC: Early Integration of Products Covered by the ATC

8. The TMB started its review under Article 2.21 of the programme of integration notified pursuant to Articles 2.8(b), 2.10 and 2.11 by Turkey and, seeking further clarification, decided to revert to its review at a subsequent meeting (G/TMB/R/30).

Notifications under Articles 2.6, 2.7(a) and (b), 2.8(a) and 2.11 of the ATC: Communications Received from Members in Response to Questions Put by the TMB

9. The TMB took note of communications by Argentina, Canada, Colombia, the Czech Republic, Norway, Pakistan, the Philippines, Poland (Stage 1), South Africa, Switzerland, Turkey and Uruguay in response to questions put by the TMB with a view to verifying whether the statistical information provided regarding integration for the first and/or the second stages referred, where appropriate, to those portions of the HS lines covered by the ATC and not to the entire respective 6-digit HS lines (G/TMB/R/32, 35, 36 and 37). The TMB started its examination of the responses provided by Cyprus, the Dominican Republic, Hungary, Japan, Korea, Liechtenstein, Poland (Stage 2), Slovenia, Sri Lanka and Thailand and decided to revert to its consideration of these communications at a subsequent meeting (G/TMB/R/32, 35 and 37).

Notification under Article 2.15 of the ATC: Elimination of Restrictions Maintained Pursuant to Article 2

10. The TMB reviewed the notification made by Norway under Article 2.15 of the elimination in two steps of most of the restrictions remaining under the ATC with respect to WTO Members. The TMB commended Norway for the early elimination of most of the restrictions it maintained under this Agreement (G/TMB/R/36).

Notifications under Article 2.17 of the ATC: Administrative Arrangements

11. The TMB reviewed, pursuant to Article 2.21, the administrative arrangements concluded between the European Community and Argentina, Hong Kong<sup>2</sup>, India, Indonesia, Korea, Macau, Malaysia, Pakistan, Peru, the Philippines, Singapore, Sri Lanka and Thailand, respectively (G/TMB/R/22, 24 and paragraphs 11 to 17 of G/TMB/R/30). The TMB also reviewed notifications made by the United States regarding the administrative arrangements agreed between the United States and Bangladesh,

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<sup>2</sup>The name of this Member has become "Hong Kong, China" as from 1 July 1997 - see WT/L/218.

Brazil, Colombia, Costa Rica, the Dominican Republic, Egypt, Fiji, Guatemala, Haiti, Hungary, India, Indonesia, Jamaica, Kenya, Korea, Macau, Malaysia, Mauritius, Pakistan, the Philippines, Poland, Qatar, Romania, Sri Lanka, Thailand, Turkey, the United Arab Emirates and Uruguay, respectively (G/TMB/R/26, 27, 30 and paragraphs 6 to 23 of G/TMB/R/31). Subsequently, the TMB took note of a communication by Guatemala related to clarifications the TMB had sought from both Guatemala and the United States with respect to the administrative arrangements concluded between Guatemala and the United States and notified by the United States pursuant to Article 2.17 (G/TMB/R/35, paragraph 15).

#### Notifications under Articles 2.17 and 5 of the ATC

12. The TMB started its consideration of the notifications made by Pakistan under Article 2.17 and by the United States under Article 5 of a mutually satisfactory understanding reached, following consultations, between the two Members.<sup>3</sup> Seeking further information and clarification from them, the TMB decided to revert to its review at a subsequent meeting (G/TMB/R/35).

#### Communications under Article 2.21 of the ATC

13. The TMB considered under Article 2.21 a communication from Colombia, made also on behalf of several other WTO Members that are members of the International Textiles and Clothing Bureau (ITCB), relating to particular aspects pertaining to the implementation by WTO Members of the programme of integration of the ATC (G/TMB/N/211, G/TMB/N/212, G/TMB/R/21 and 22).

14. The TMB considered a further notification by Colombia, made also on behalf of a number of WTO Members that are also members of the ITCB, pursuant to Article 2.21, alleging certain discrepancies in the programme of integration notified by the European Community under Article 2.6 of the ATC, and requesting the TMB to review this matter in terms of Article 2.21 (G/TMB/R/27, 28 and paragraphs 5 to 42 of G/TMB/R/29). In this context, the TMB also considered the statement of the EC's representative that several other WTO Members had included products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC in the list of products to be integrated for the first and/or second stages of implementation of the ATC (G/TMB/R/29, paragraphs 43 to 45).

15. The TMB had a follow-up discussion of the systemic problem mentioned in paragraph 14 above, which led to a conclusion according to which, in principle, all the Members which had notified integration programmes could be affected by technical problems resulting essentially from the non-availability of statistical information corresponding to the precise product descriptions contained in the Annex to the ATC, independently of whether or not they had included "ex HS items" in their respective integration programmes for Stage 1 and/or Stage 2. Therefore, the TMB decided to request that all Members which had submitted integration programmes, including those which had not as yet included in such programmes "ex HS items", ascertain whether the statistical data counted in calculating the total volume of the Member's 1990 imports of the products in the Annex referred to the whole HS lines, or only to that portion of those HS lines which was covered by the ATC. It was the TMB's expectation that Members would report to it on the outcome of such verification (G/TMB/R/34, paragraph 7).

16. In addition, the TMB received a notification from the European Community stressing the need for the application of equality of treatment in respect of the systemic issue outlined above. In light of the comments made by the TMB in its comprehensive report to the Council for Trade in Goods on this systemic issue, and of the TMB's continuing action in respect of those Members that have

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<sup>3</sup>See G/TMB/R/11, paragraph 12.

included “ex HS lines” in their integration programmes, the European Community did not insist on a formal review of this notification as scheduled by the TMB, but reserved its right in respect of its notification.

#### Notifications under Article 3.1 of the ATC

17. The TMB took note of a notification by Morocco pursuant to Article 3.1, after having sought clarification from Morocco (G/TMB/R/22). The TMB also took note of an additional notification made under Article 3.1 by the European Community following Bulgaria’s accession to the WTO (G/TMB/R/24).

18. The TMB also concluded the consideration of the notifications under Article 3.1 by Mexico and Thailand (G/TMB/R/30, paragraphs 18 and 19).

#### Notifications under Article 6.1 of the ATC

19. The TMB took note of the notifications by Brunei Darussalam and Iceland that they did not wish to retain the right to use the provisions of Article 6 (G/TMB/R/21). The TMB also took note of the notifications by Burkina Faso, Liechtenstein, Saint Kitts and Nevis and the United Arab Emirates that they wished to retain the right to use the provisions of Article 6 (G/TMB/R/19, 21, 23 and 27, respectively).

#### Notifications under Article 6.9 of the ATC

20. The TMB reviewed, pursuant to Article 6.9, the notifications by the United States and El Salvador of a restraint measure agreed between the two Members on imports of cotton and man-made fibre skirts (US category 342/642) from El Salvador. On the basis of considerations as detailed in the report of the meeting, the TMB concluded that this restraint measure agreed between the United States and El Salvador was justified in accordance with the provisions of Article 6 of the ATC (G/TMB/R/19).<sup>4</sup> Subsequently, the TMB considered a communication received from El Salvador, related to this review, in which El Salvador, *inter alia*, urged the TMB that it be invited to present its observations on this matter, “so that they will be taken into account if the TMB decides to make recommendations or observations on this case”. In view of the fact that this agreed restraint measure had already been reviewed by the TMB, the TMB decided to seek clarification from El Salvador regarding this communication (G/TMB/R/22, paragraph 12). No further communication was received from El Salvador on this matter.

#### Notifications under Article 6.11 of the ATC: Transitional Safeguard Actions Referred to the TMB

21. The TMB reviewed notifications made by Brazil of a safeguard measure it had introduced provisionally, pursuant to Article 6.11 of the ATC, on imports of products of category 618 (woven artificial filament fabric) from Hong Kong (G/TMB/R/20, paragraphs 4 to 26), as well as of a safeguard measure introduced provisionally by Brazil, pursuant to Article 6.11 of the ATC, on imports of products of category 838 (men’s and boys’ shirts, knitted or crocheted, of other textile materials) from Hong Kong<sup>5</sup> (G/TMB/R/20, paragraphs 27 to 35)<sup>6</sup>.

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<sup>4</sup>The outcome of the TMB review as summarized is contained in the Annex.

<sup>5</sup>See also paragraph 28.

<sup>6</sup>The outcome of the TMB reviews as summarized is contained in the Annex.

22. The TMB reviewed notifications made by Brazil and Korea of restraint measures agreed between the two Members, pursuant to Article 6.11 of the ATC, on imports of artificial and synthetic fibre products of categories 611, 618, 619, 620 and 627 from Korea<sup>7</sup> (G/TMB/R/22, paragraphs 7 and 8, G/TMB/R/23, paragraph 8, and G/TMB/R/27, paragraphs 8 to 37).

#### Notifications under Article 7 of the ATC

23. In the context of the preparation for the comprehensive report on the implementation of the ATC during its first stage, to be transmitted to the Council for Trade in Goods in the context of the major review envisaged in Article 8.11 of the ATC, the TMB also issued, in February and April 1997, a request for information to WTO Members, reminding them of some notification obligations contained in the ATC (G/TMB/11). Some of the replies received were related to the implementation of Article 7 of the ATC. The TMB received and considered such replies from Colombia, Egypt, the European Community, India, Mauritius, New Zealand, Pakistan and Peru (G/TMB/R/31 to 34).

24. The TMB took note of the communication by the United States, addressed to the TMB pursuant to Article 7.2 of the ATC, that the United States had requested the Dispute Settlement Body to establish a Panel in the matter of *Argentina - Certain Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items* (G/TMB/R/35).

#### Notifications under Articles 8.5 and 4.2 of the ATC

25. The TMB took note of a communication received from the Philippines that, in view of a mutually agreed solution between the Philippines and the United States, it requested that the matter it had raised, pursuant to Articles 8.5 and 4.2, regarding changes in the United States' rules of origin, should be removed from the TMB's agenda. This was without prejudice to the Philippines' rights under the ATC, in particular under its Article 8 (G/TMB/R/26, paragraph 7).

#### Notification under Article 8.6 of the ATC

26. The TMB considered a notification received from Korea requesting the TMB to conduct, pursuant to Article 8.6, an examination of safeguard measures introduced by Ecuador, referring to the provisions of the Agreement on Textiles and Clothing, on imports of several textile and clothing products from Korea and Hong Kong (G/TMB/R/21, 22 and paragraphs 9 to 18 of G/TMB/R/23). Subsequently, the TMB took note of a communication by Ecuador that the measure affecting textile imports, referred to the TMB by Korea, had expired on 9 February 1997 (G/TMB/R/30).

#### Notification under Articles 8.6, 8.7 and 8.8 of the ATC

27. The TMB reviewed a communication from Honduras under Articles 8.6 and 8.7 requesting the TMB to "consider and make a recommendation at its next meeting concerning the appropriateness of the United States maintaining a restraint on Honduran exports under category 435 (women's wool coats and jackets)". Honduras referred also to Article 8.8 which states that "whenever the TMB is called upon to make recommendations or findings, it shall do so, preferably within a period of 30 days, unless a different time period is specified in this Agreement" (G/TMB/R/28, paragraphs 5 to 17). At its thirty-second meeting, the TMB reverted, as agreed, to the matter raised by Honduras. It took note of a communication by the United States, and expected that the United States would rescind the restraint as soon as possible, and that it would communicate the date in question to the TMB at the

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<sup>7</sup>The outcome of the TMB reviews as summarized is contained in the Annex.

latest by 10 July 1997 (G/TMB/R/31, paragraphs 24 to 26). At its thirty-fourth meeting, the TMB reverted, as agreed, to that matter, and took note of communications by both Honduras and the United States (G/TMB/R/33, paragraphs 8 to 11). At its thirty-fifth meeting, the TMB, following up on the matter, as agreed at an earlier meeting, took note of a further communication from the United States and of a statement by Honduras (G/TMB/R/34, paragraphs 4 to 6). Subsequently, the United States informed the TMB that, in pursuance of an earlier communication to the TMB, it had removed the restraint on imports of products of US category 435 from Honduras on 30 September 1997 (G/TMB/R/36, paragraph 14).

#### Notification under Article 8.9 of the ATC

28. The TMB took note of a communication received from Brazil that “in accordance with paragraph 9 of Article 8 of the ATC, the Brazilian Government shall endeavour to accept in full the recommendations of the TMB concerning transitional safeguards applied to imports of categories 618 (woven artificial filament fabrics) and 838 (men’s and boys’ shirts, knitted or crocheted, of other textile materials) from Hong Kong, contained in document G/TMB/9”. The Government of Brazil also “reserved its rights under paragraph 12 of Article 6 of the ATC in relation to such recommendations” (G/TMB/R/22, paragraph 11). Subsequently, the TMB took note of another communication by Brazil that it had decided, with effect as from 6 January 1997, to rescind the transitional safeguard it applied to imports of textile products from Hong Kong classified in category 838 (G/TMB/R/24, paragraph 9).

#### Notification under Article 8.10 of the ATC

29. The TMB considered a communication from Hong Kong under Article 8.10, related to the safeguard measure introduced by Brazil pursuant to Article 6.11 of the ATC on imports of products of category 618 (woven artificial filament fabrics) from Hong Kong<sup>8</sup>, in which Hong Kong conveyed its inability to conform with the recommendation the TMB had made, according to which the measure should be rescinded by Brazil at latest by 31 December 1997 (G/TMB/R/26, paragraphs 8 to 30).<sup>9</sup>

#### Discussion on Panel and Appellate Body Reports Adopted by the Dispute Settlement Body

30. The TMB had a general discussion on the reports of the panels “United States - Restrictions on imports of cotton and man-made fibre underwear” from Costa Rica and “United States - Measure affecting imports of woven wool shirts and blouses from India”, and of the respective subsequent Appellate Body reports. The TMB agreed to revert to this discussion at a future meeting (G/TMB/R/33, paragraph 14).

#### Comprehensive Report under Article 8.11 of the ATC

31. The TMB devoted part of several meetings to the preparation and adoption of its comprehensive report to the Council for Trade in Goods on the implementation of the ATC during its first stage, envisaged in Article 8.11 of the ATC (G/TMB/R/19, 21, 22, 26, 30, 31, 32, 33 and G/TMB/R/34). In this context the TMB decided to send to WTO Members a request for information regarding the implementation of the notification requirements under Article 7.2 of the ATC, as well as of some of its other provisions (G/TMB/R/23). At the request of the TMB, the WTO Secretariat provided Members with background statistical information with respect to trade in textiles and clothing, in time for the major review to be conducted by the Council for Trade in Goods, pursuant to Article 8.11 (G/L/184).

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<sup>8</sup>See also paragraphs 21 and 28.

<sup>9</sup>The outcome of the TMB review as summarized is contained in the Annex.

The TMB also decided to send to WTO Members, in the early part of April 1997, a reminder of the request for information it had sent on 14 February 1997 (G/TMB/R/26).

Working Procedures

32. The TMB took note of the decision of the Dispute Settlement Body on 3 December 1996 to adopt the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes (G/TMB/R/22).

Composition of the TMB

33. The composition of the TMB during the period under review is contained in paragraphs 2 of G/TMB/R/21, 23, 24, 25, 29, 32, 33, 35, 36 and 37.

ANNEX

Excerpts of TMB Review of Notifications Received Pursuant to  
Articles 6.9, 6.11 and 8.10 of the ATC

Notification under Article 6.9 of the ATC

United States/El Salvador: imports of cotton and man-made fibre skirts (US category 342/642)

The TMB, while examining the specific and relevant factual information (market statement) made available by the United States to El Salvador during the bilateral consultations, observed that considerable efforts had been made by the United States to match the data as closely as possible to the requirements of paragraphs 2, 3 and 4 of Article 6.

The TMB noted that the volume of imports into the United States of products of category 342/642, from all sources, had increased in 1993 and 1994, and had continued to increase in 1995. This had taken place in the context of a product subject to quantitative restrictions for a large number of countries, including some small suppliers in this category.

The TMB observed that certain economic variables such as the declining United States' domestic production, the reduction of the share of the United States' market held by domestic manufacturers to a relatively low level, the decrease in employment, particularly in 1994 and 1995, and the pressure put on domestic prices by imports prices, indicated that the United States' industry producing cotton and man-made fibres skirts was experiencing problems as a result of increased imports. On the other hand, some other economic variables, in particular the evolution of average wages per worker, could point to a different direction. With respect to some other variables, the TMB noted that exports remained at a low level and were declining; productivity had remained stable despite reductions in employment. Data on some elements, supplied at a higher level of industry aggregation, such as, for example, profits, investment, inventories and capacity utilization, could not provide sufficient guidance. The TMB concluded that, taking into account the elements mentioned above, the circumstances described in paragraph 2 of Article 6 were observed in the United States' market for cotton and man-made fibre skirts.

The TMB further observed that imports of products of category 342/642 into the United States from El Salvador had increased significantly, particularly in 1995. This was taking place in the context of increased imports from several other sources, both restrained and un-restrained, whose share of overall imports was larger than that of El Salvador. El Salvador's exports were however, on average, priced substantially below the US average domestic price and, with one exception, below the average prices of imports from countries with a higher share of imports. The TMB therefore considered that the circumstances described in paragraph 2 of Article 6 could be attributed to increased imports from El Salvador.

The TMB noted that the total level of the agreed restraint, as well as that portion of the restraint that was available unconditionally to El Salvador (i.e. the specific limit), were substantially above the rollback level. It observed that no growth rate was provided for with respect to the GAL. However, keeping also in mind indications given by the United States Government that GALs can be increased on request, it is the TMB's understanding and recommendation that the GAL will be increased by no less than 6 per cent annually.



On the basis of the considerations mentioned above, the TMB concluded that this restraint measure agreed between the United States and El Salvador was justified in accordance with the provisions of Article 6 of the Agreement on Textiles and Clothing.

Brazil/Hong Kong: imports of woven artificial filament fabrics (category 618)

Notification by Brazil under Article 6.11 of the ATC

The Brazilian industry was showing somewhat contradictory symptoms and the evolution of a number of economic indicators and their possible inter-relation could lead to diverging interpretations. The slight increase in production, improvement of productivity, increase of exports and rise in wages could allow an interpretation that the industry had already been relatively successful in terms of re-structuring and adjusting to the new competitive conditions. Developments regarding employment, the number of enterprises, capacity utilization, profits and investment could point to the opposite direction. The data provided an unambiguous indication that the industry had been unable to take advantage of the substantial increase in its domestic market. Part of the strength of the domestic demand could be attributed to the implementation of the economic stabilization programme, and in particular to the liberalization of imports undertaken by Brazil during the last decade. Adjustment efforts had been undertaken, which had not enabled the Brazilian industry to compete successfully with imports, in particular given the price levels prevailing in the Brazilian market. The TMB took the view that, under these circumstances, the Brazilian industry producing, *inter alia*, woven artificial filament fabrics was experiencing serious damage.

On the basis of the data submitted by Brazil, it was difficult to assess the extent to which this damage could be attributed specifically to the difficulties experienced by the producers of products of category 618. The TMB, while accepting that serious damage to the industry producing category 618 could be demonstrated, expressed concern that, with respect to some variables, it had to rely on arguments by inference, in view of the lack of sufficiently specific data relating to the category itself.

The TMB therefore had to consider whether this serious damage could be attributed to imports from Hong Kong, in accordance with paragraph 4 of Article 6 of the ATC. In doing so, the TMB, mindful of the fact that, according to this paragraph "none of these factors, either alone or combined with other factors, can necessarily give decisive guidance", noted the following:

- imports from Hong Kong had shown a substantial increase between 1994 and 1995;
- this increase in imports from Hong Kong had taken place in the context of an even greater increase in imports from all sources;
- the share of imports from Hong Kong in Brazil's apparent consumption of products of category 618 had increased from 1994 to 1995;
- the average import price for Hong Kong was below domestic prices for products at a comparable stage of commercial transaction. In this respect the TMB considered the argument that products imported from Hong Kong were addressing a different segment of the market from that addressed by domestic products, but, due to the lack of necessary technical information, could not reach a conclusion on this.

Such elements allowed the TMB to conclude that the serious damage experienced by the Brazilian industry could be attributed in part to imports from Hong Kong in accordance with paragraph 4 of Article 6.

The TMB noted that Brazil had invoked the provisions of paragraph 11 of Article 6 and applied the restraint provisionally, as it had considered that its industry was experiencing “highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair”. It took note of the limited information provided by Brazil to Hong Kong on this matter, and of the information it had provided to the TMB, according to which a further increase in imports was imminent, in view of the amount of import licences issued, as well as of the amounts of goods that could be imported into Brazil at short notice from Brazilian customs' warehouses. The TMB noted that these expectations had not materialized.

The TMB was of the view that in cases where the provisions of paragraph 11 of Article 6 were invoked, the expectation was that the elements envisaged in paragraphs 2, 3 and 4 of Article 6 would indicate as unambiguously as possible the highly unusual and critical character of the circumstances. The TMB was also of the view that, unless such circumstances were met, any action taken under Article 6 should be preceded by consultations between the parties.

The TMB observed that paragraph 11 of Article 6 requires it to promptly conduct an examination of the matter, and to make appropriate recommendations to the Members concerned. In this regard the TMB noted that it had arrived at the conclusions according to which:

- a) serious damage to the industry producing products category 618, caused by increased quantities in total imports of these products, could be demonstrated;
- b) the serious damage experienced by the Brazilian industry could be attributed in part to imports from Hong Kong in accordance with paragraph 4 of Article 6.

It observed, however, that there were indications to the effect that the Brazilian industry producing products of category 618 had already been undertaking important restructuring and adjustment. In light of this the TMB considered that a shorter period of time than the maximum time-frame envisaged in paragraph 12(a) of Article 6 should enable the industry in Brazil to successfully accomplish its adjustment to the changed competitive environment. The TMB recommended therefore that the measure taken by Brazil against imports from Hong Kong of products of category 618 should be rescinded at latest by 31 December 1997.

#### Notification by Hong Kong under Article 8.10 of the ATC

As follows from the TMB's observations reflected in particular in paragraphs 17, 20, 22, 23 and 25 [of G/TMB/R/26], the Body agreed with Hong Kong's main contention according to which a determination of serious damage could not be made almost entirely by reference to, and therefore by inferences drawn from, data relating to much broader industries in respect of which damage is claimed. On the other hand, in carefully considering its examination of the particular case (i.e. the Brazilian measures against imports of category 618 products from Hong Kong), the TMB could not reach the same conclusions as Hong Kong did, since in this case the determination of serious damage had not been made almost entirely by reference to data relating to such broader industries, as some important data and factual information provided by Brazil were category-specific.

The TMB recognized, however, that certain formulations of its report on the examination of this matter pursuant to paragraph 11 of Article 6 could be read so as to lead to slightly divergent conclusions, which could be different from the statement contained in the preceding paragraph. This applied in particular to paragraphs 20 and 21 of the report [G/TMB/R/20]. The reference in the report to the fact that the TMB, with respect to some variables, had to rely on arguments by inference in view of the lack of specific data relating the category itself, was aimed at indicating the serious limitations

that the Body had in drawing reliable conclusions on the basis of data which were related to broader industries than to the category 618 industry.

The TMB recalled that it had already expressed concerns with respect to some of the non-category specific data provided by Brazil, which had made it difficult to assess the extent to which developments in some economic variables could be attributed to the evolution of the market in category 618 products. While in light of the conclusions reached in paragraphs 18, 23, 27 and, in particular, 28 [of G/TMB/R/26], the TMB did not consider it appropriate to revise its recommendations adopted in November 1996 or to issue further recommendations, the Body recalled that it had observed that there were indications to the effect that the Brazilian industry producing products of category 618 had already been undertaking important restructuring and adjustment. The TMB, therefore, expected Brazil to keep the developments of the market of category 618 products under review, and recalled that it had recommended to Brazil that the measure taken against imports from Hong Kong of products of category 618 should be rescinded at latest by 31 December 1997.

Brazil/Hong Kong: imports of men's and boys' shirts, knitted or crocheted, of other textile materials (category 838)

Notification by Brazil under Article 6.11 of the ATC

On the basis of the considerations [detailed in paragraphs 31 to 33 of G/TMB/R/20], the TMB came to the conclusion that Brazil had not demonstrated that the Brazilian industry producing products of category 838 had experienced serious damage, as envisaged in paragraph 2 of Article 6, and recommended that Brazil rescind the measure.

The TMB equally observed that the recourse by Brazil to the provisions of paragraph 11 of Article 6 was not appropriate. The TMB reiterated its view that in cases where these provisions were invoked, the expectation was that the elements envisaged in paragraphs 2, 3 and 4 of Article 6 would indicate as unambiguously as possible the highly unusual and critical character of the circumstances, and that, unless such circumstances were met, any action taken under Article 6 should be preceded by consultations between the parties.

Notifications by Brazil and Korea under Article 6.10 of the ATC: imports of artificial and synthetic fibre products of categories 611, 618, 619, 620 and 627

The TMB noted that, with respect to all the categories subject to agreement with Korea, Brazil had invoked the provisions of paragraph 11 of Article 6 and applied the restraints provisionally, as it had considered that its industry was experiencing "highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair". It observed in this regard that Brazil had not provided to Korea in its market statements data as up to date as could be expected to substantiate the critical circumstances. The TMB recalled its view<sup>10</sup> that in cases where the provisions of paragraph 11 of Article 6 were invoked, the expectation was that the elements envisaged in paragraphs 2, 3 and 4 of Article 6 would indicate as unambiguously as possible the highly unusual and critical character of the circumstances. The TMB was also of the view that, unless such circumstances were met, any action taken under Article 6 should be preceded by consultations between the parties.

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<sup>10</sup>See G/TMB/R/20, paragraph 24.

Category 611 - woven fabrics containing 85 per cent or more by weight of artificial staple

The TMB considered all the factors mentioned [detailed in paragraphs 11 to 14, and 16 of G/TMB/R/27], none of which, either alone or combined with other factors, can necessarily give decisive guidance, in assessing whether the Brazilian industry producing products of category 611 was experiencing serious damage. Bearing in mind also its view that product-specific information and data should have a major impact on the overall assessment whether serious damage or actual threat thereof could be demonstrated,<sup>11</sup> the TMB concluded that the circumstances described in paragraph 2 of Article 6 were observed in Brazil's market for woven fabrics containing 85 per cent or more by weight of artificial staple.

The TMB further observed that imports of products of category 611 into Brazil from Korea had increased by more than 287 per cent in volume from 1994 to 1995, so that Korea had consolidated its position as the main supplier on the Brazilian market for category 611. Korea's share of the total volume of imports of products of category 611 into Brazil had increased from 36.8 per cent to 64.1 per cent between 1994 and 1995. The average price of imports of products of category 611 from Korea had fallen over the same period, and was 33 per cent below domestic prices in 1995. The TMB therefore considered that the circumstances described in paragraph 2 of Article 6 could be attributed to a sharp and substantial increase in imports from Korea.

On the basis of the above considerations and bearing in mind the fact that all the elements of the agreement, mentioned in paragraph 8 [of G/TMB/R/27], were in conformity with the relevant paragraphs of Article 6, the TMB concluded that this restraint measure agreed between Brazil and Korea was justified in accordance with the provisions of Article 6 of the ATC.

Category 618 - woven artificial filament fabrics

Considering all the factors mentioned [detailed in paragraphs 11 to 14, and 20 of G/TMB/R/27], none of which, either alone or combined with other factors, can necessarily give decisive guidance, and bearing in mind also its view that product-specific information and data should have a major impact on the overall assessment whether serious damage or actual threat thereof could be demonstrated, the TMB concluded that the circumstances described in paragraph 2 of Article 6 were observed in Brazil's market for woven artificial filament fabrics.

The TMB further observed that imports of products of category 618 into Brazil from Korea had increased by more than 186 per cent in volume from 1994 to 1995, so that Korea had remained the second supplier on the Brazilian market for category 618, although Korea's share of the total volume of imports of products of category 618 into Brazil had decreased from 28.1 per cent to 24.5 per cent. The average price of imports of products of category 618 from Korea had fallen over the same period. The TMB therefore considered that the circumstances described in paragraph 2 of Article 6 could be attributed to a sharp and substantial increase in imports from Korea.

On the basis of the above considerations and bearing in mind the fact that all the elements of the agreement, mentioned in paragraph 8 [of G/TMB/R/27], were in conformity with the relevant paragraphs of Article 6, the TMB concluded that this restraint measure agreed between Brazil and Korea on imports of products of category 618 was justified in accordance with the provisions of Article 6 of the ATC.

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<sup>11</sup>See G/TMB/R/26, paragraph 25.

The TMB further recalled that, in the context of its review of the safeguard measure taken at the same time by Brazil on imports from Hong Kong of products of category 618, it had observed that there were indications to the effect that the Brazilian industry producing products of category 618 had already been undertaking important restructuring and adjustment. In light of this the TMB had considered that a shorter period of time than the maximum time-frame envisaged in paragraph 12(a) of Article 6 should enable the industry in Brazil to successfully accomplish its adjustment to the changed competitive environment, and had therefore recommended that the measure taken by Brazil against imports from Hong Kong of products of category 618 should be rescinded at latest by 31 December 1997.<sup>12</sup>

#### Category 619 - polyester filament fabrics

The TMB considered all the factors mentioned [detailed in paragraphs 11 to 14, and 25 of G/TMB/R/27], none of which, either alone or combined with other factors, can necessarily give decisive guidance, in assessing whether the Brazilian industry producing products of category 619 was experiencing serious damage. Bearing in mind also its view that product-specific information and data should have a major impact on the overall assessment whether serious damage or actual threat thereof could be demonstrated, the TMB concluded that the circumstances described in paragraph 2 of Article 6 were observed in Brazil's market for polyester filament fabrics.

The TMB further observed that imports of products of category 619 into Brazil from Korea had increased by more than 139 per cent in volume from 1994 to 1995, so that Korea had consolidated its position as the main supplier on the Brazilian market for category 619. Korea's share of the total volume of imports of products of category 619 into Brazil had increased from 43.9 per cent to 60.1 per cent between 1994 and 1995. The average price of imports of products of category 619 from Korea had fallen over the same period, and was 44.4 per cent below domestic prices in 1995. The TMB therefore considered that the circumstances described in paragraph 2 of Article 6 could be attributed to a sharp and substantial increase in imports from Korea.

On the basis of the above considerations and bearing in mind the fact that all the elements of the agreement, mentioned in paragraph 8 [of G/TMB/R/27], were in conformity with the relevant paragraphs of Article 6, the TMB concluded that this restraint measure agreed between Brazil and Korea on imports of products of category 619 was justified in accordance with the provisions of Article 6 of the ATC.

#### Category 620 - other synthetic filament fabrics

The TMB considered all the factors mentioned [detailed in paragraphs 11 to 14, and 29 of G/TMB/R/27], none of which, either alone or combined with other factors, can necessarily give decisive guidance, in assessing whether the Brazilian industry producing products of category 620 was experiencing serious damage. Bearing in mind also its view that product-specific information and data should have a major impact on the overall assessment whether serious damage or actual threat thereof could be demonstrated, the TMB concluded that the circumstances described in paragraph 2 of Article 6 were observed in Brazil's market for other synthetic filament fabrics.

The TMB further observed that imports of products of category 620 into Brazil from Korea had increased by more than 600 per cent in volume from 1994 to 1995, so that Korea had become the main supplier on the Brazilian market for category 620. Korea's share of the total volume of imports of products of category 620 into Brazil had increased from 24.9 per cent to 53.5 per cent between 1994

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<sup>12</sup>See G/TMB/R/20, paragraph 26.

and 1995. The average price of imports of products of category 620 from Korea had fallen over the same period, and was 36.9 per cent below the average domestic price in 1995. The TMB therefore considered that the circumstances described in paragraph 2 of Article 6 could be attributed to a sharp and substantial increase in imports from Korea.

On the basis of the above considerations and bearing in mind the fact that all the elements of the agreement, mentioned in paragraph 8 [of G/TMB/R/27], were in conformity with the relevant paragraphs of Article 6, the TMB concluded that this restraint measure agreed between Brazil and Korea on imports of products of category 620 was justified in accordance with the provisions of Article 6 of the ATC.

#### Category 627 - sheeting of staple filament fibre combination

The TMB considered all the factors mentioned [detailed in paragraphs 11 to 14, and 33 of G/TMB/R/27], none of which, either alone or combined with other factors, can necessarily give decisive guidance, in assessing whether the Brazilian industry producing products of category 627 was experiencing serious damage. Bearing in mind also its view that product-specific information and data should have a major impact on the overall assessment whether serious damage or actual threat thereof could be demonstrated, the TMB concluded that the circumstances described in paragraph 2 of Article 6 were observed in Brazil's market for sheeting of staple filament fibre combination.

The TMB further observed that imports of products of category 627 into Brazil from Korea had increased by more than 229 per cent in volume from 1994 to 1995, so that Korea had maintained its position as the main supplier on the Brazilian market for category 627, although Korea's share of the total volume of imports of products of category 627 into Brazil had decreased from 39.7 per cent to 37.3 per cent between 1994 and 1995. The average price of imports of products of category 627 from Korea had fallen over the same period, and was 40.9 per cent below the average domestic price in 1995. The TMB therefore considered that the circumstances described in paragraph 2 of Article 6 could be attributed to a sharp and substantial increase in imports from Korea.

On the basis of the above considerations and bearing in mind the fact that all the elements of the agreement, mentioned in paragraph 8 [of G/TMB/R/27], were in conformity with the relevant paragraphs of Article 6, the TMB concluded that this restraint measure agreed between Brazil and Korea on imports of products of category 627 was justified in accordance with the provisions of Article 6 of the ATC.