

# WORLD TRADE ORGANIZATION

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COMPREHENSIVE REPORT OF THE TEXTILES MONITORING BODY  
TO THE COUNCIL FOR TRADE IN GOODS  
ON THE IMPLEMENTATION OF THE AGREEMENT ON TEXTILES AND CLOTHING  
DURING THE FIRST STAGE OF THE INTEGRATION PROCESS

I. This comprehensive report on the implementation of the Agreement on Textiles and Clothing during the first stage of the integration process is submitted by the Textiles Monitoring Body to the Council for Trade in Goods in order to assist it in its major review of the implementation of the Agreement. Given the deadline specified in Article 8.11 of the Agreement, the report covers the period 1 January 1995 to 24 July 1997.

II. Article 8.11 requires that the comprehensive report should address in particular matters with regard to the integration process, the application of the transitional safeguard mechanism, and relating to the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 respectively. The TMB's comprehensive report may include any recommendation as deemed appropriate by the TMB to the Council for Trade in Goods.

III. The integration process is addressed in Chapter II of the report, the application of the transitional safeguard mechanism in Chapter III. Matters relating to the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7, are addressed in Chapters II, IV, V and VIII. Chapters VI, VII and IX to XI relate to the other aspects of the implementation of the ATC. Additional comments, observations and assessment by the TMB are to be found at the end of the relevant Chapters.

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## I. INTRODUCTION

1. The Agreement on Textiles and Clothing (ATC), in accordance with Article 1.1<sup>1</sup>, sets out provisions to be applied by Members during a transitional period of ten years for the integration of the textiles and clothing sector into GATT 1994. As specified in Article 9, the ATC and all restrictions thereunder shall stand terminated on 1 January 2005, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. There shall be no extension of the ATC.
2. Article 8.11 provides that "in order to oversee the implementation of this Agreement, the Council for Trade in Goods shall conduct a major review before the end of each stage of the integration process. To assist in this review, the TMB shall, at least five months before the end of each stage, transmit to the Council for Trade in Goods a comprehensive report on the implementation of this Agreement during the stage under review, in particular in matters with regard to the integration process, the application of the transitional safeguard mechanism, and relating to the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 respectively. The TMB's comprehensive report may include any recommendation as deemed appropriate by the TMB to the Council for Trade in Goods". As the first stage of the integration process under the ATC comprises the period 1 January 1995 (i.e. the date of entry into force of the WTO Agreement) to 31 December 1997, the Council for Trade in Goods is required to conduct the first major review before the end of 1997. The present comprehensive report was adopted and is being transmitted by the Textiles Monitoring Body (TMB) to the Council for Trade in Goods pursuant to Article 8.11.
3. This comprehensive report addresses all of the operational provisions of the ATC. As required by Article 8.11, particular emphasis has been put on matters with regard to the integration process, the application of the transitional safeguard mechanism, as well as those relating to the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 respectively. Since the submission of integration programmes for Stage 2 was due by 31 December 1996, the report also covers the fulfilment of this notification obligation.
4. The Ministerial Declaration adopted at the first Ministerial Meeting of the WTO (December 1996, Singapore), contains the following section on Textiles and Clothing: "We confirm our commitment to full and faithful implementation of the provisions of the Agreement on Textiles and Clothing (ATC). We stress the importance of the integration of textile products, as provided for in the ATC, into GATT 1994 under its strengthened rules and disciplines because of its systemic significance for the rule-based, non-discriminatory trading system and its contribution to the increase in export earnings of developing countries. We attach importance to the implementation of this Agreement so as to ensure an effective transition to GATT 1994 by way of integration which is progressive in character. The use of safeguard measures in accordance with ATC provisions should be as sparing as possible. We note concerns regarding the use of other trade distortive measures and circumvention. We reiterate the importance of fully implementing the provisions of the ATC relating to small suppliers, new entrants and least-developing country Members, as well as those relating to cotton-producing exporting Members. We recognize the importance of wool products for some developing country Members. We reaffirm that as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such action as may be necessary to abide by GATT 1994 rules and disciplines so as to achieve improved market access for textiles and clothing products. We agree that, keeping in view its quasi-judicial nature, the

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<sup>1</sup>Unless otherwise specified, all Articles mentioned refer to the Agreement on Textiles and Clothing.

Textiles Monitoring Body (TMB) should achieve transparency in providing rationale for its findings and recommendations. We expect that the TMB shall make findings and recommendations whenever called upon to do so under the Agreement. We emphasize the responsibility of the Goods Council in overseeing, in accordance with Article IV:5 of the WTO Agreement and Article 8 of the ATC, the functioning of the ATC, whose implementation is being supervised by the TMB".

5. The Ministerial Declaration has also been given full consideration in drawing up the present report and the particular aspects of the issues covered by the Declaration are addressed in the context of the relevant ATC provisions.

6. The report is essentially based on notifications submitted by the Members to the TMB and on the actions taken by the TMB with respect to these notifications. According to Article 8.3, the TMB "... shall rely on notifications and information supplied by the Members under the relevant Articles of this Agreement, supplemented by any additional information or necessary details they may submit or it may decide to seek from them ...". Also on the basis of the authorization contained in this provision, in February 1997, the TMB issued a request for information to WTO Members, inviting them to submit notifications or information regarding the implementation of particular ATC provisions, for the purpose of the preparation of the TMB's comprehensive report (G/TMB/11). Replies received from Members to this request have also been taken into consideration in the relevant sections of this report.<sup>2</sup> Article 8.3 provides, furthermore, that the TMB "... may also rely on notifications to and reports from other WTO bodies and from such other sources as it may deem appropriate". Relevant notifications to, and reports from other WTO bodies have also been considered, to the extent necessary, in the preparation of the report.

7. The TMB adopted detailed reports after each of its meetings. It provided to the Council for Trade in Goods, as required, an annual report at the end of 1995, and, in the context of the preparation of the Singapore Ministerial Conference, a detailed report covering the period 1 January 1995 to October 1996. The present report covers the period beginning on 1 January 1995 and ending on 24 July 1997, the date of its adoption, and relies to a large extent on the reports adopted by the TMB. In addition, the TMB has provided further comments, observations and assessment for the consideration of Members.

8. Bearing in mind the major review to be conducted by the Council for Trade in Goods, the TMB has requested the WTO Secretariat to provide Members, as a background document, statistical information with respect to trade in textiles and clothing (G/TMB/R/26, paragraph 31). According to indications given to the TMB, this document is expected to be issued by mid-October 1997.

## II. INTEGRATION PROCESS

9. Progressive, staged integration of the products covered by the ATC into the GATT 1994 is one of the main features of the ATC, which will "permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade". The imports of a product integrated are no longer subject to the rules of the ATC but are subject to GATT 1994 rules and disciplines. In cases

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<sup>2</sup>Replies were received from the following Members: Colombia, Egypt, the European Community, India, Mauritius, New Zealand, Pakistan and Peru. In addition, in reply to additional specific questions posed by the TMB, submissions were received from Canada, the European Community, Norway and the United States.

where imports of a product integrated into the GATT 1994 are, prior to their integration, subject to restrictions maintained under Article 2, such restrictions are *ipso facto* eliminated.

10. According to the ATC, integration takes place in four stages, as specified in Articles 2.6 and 2.8, except for those Members which did not maintain restrictions under the MFA and, pursuant to Article 6.1, chose not to retain the right to use the safeguard provisions of Article 6. Such Members are, according to Article 2.9, deemed to have integrated their textile and clothing products into GATT 1994 and are, therefore, exempted from complying with the provisions of Articles 2.6 to 2.8 and 2.11.

A. FIRST STAGE OF INTEGRATION: 1995 to 1997

11. Article 2.6 states that "on the date of entry into force of the WTO Agreement, each Member shall integrate into GATT 1994 products which accounted for not less than 16 per cent of the total volume of the Member's 1990 imports of the products in the Annex, in terms of HS lines or categories. The products to be integrated shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing". The Members which had made a notification under Article 2.1 (i.e. those which had maintained restrictions under the MFA, see Chapter IV) are covered by Article 2.7(a), and the other Members by Article 2.7(b).

12. According to Articles 2.7(a) and (b), the programmes of integration had to be notified according to a precise time-table, and circulated to all Members. Notifications received pursuant to Article 2.7(a) by the GATT Secretariat by October 1994 were circulated by it to the other participants in the Uruguay Round negotiations, and made available to the TMB, once established, for the purpose of Article 2.21. The TMB circulated the notifications it had received pursuant to Article 2.7(b), after the entry into force of the WTO Agreement, to WTO Members for their information, in accordance with this Article. In accordance with Articles 2.7(a) and (b), the TMB reviewed the integration programmes pursuant to Article 2.21 (Article 2.21 states, *inter alia*, that the TMB shall keep under review the implementation of Article 2).

13. In reviewing the notifications made pursuant to Article 2.6, the TMB verified, on the basis of the product description and classification notified by Members, and of trade data provided by them, whether the basic requirement of integrating not less than 16 per cent of the total volume of the base year's imports had been met, and whether products of the four groups referred to in paragraph 6 of Article 2 had been represented in the respective integration programmes. In the case of Members submitting notifications pursuant to Article 2.7(a), the TMB had also examined whether or not products previously subject to quantitative restrictions had been included into the programme of integration. The TMB's review and taking note of the notifications is without prejudice to Members' rights and obligations under the relevant provisions of the ATC.

1. Integration Pursuant to Articles 2.6 and 2.7(a) of the ATC

(a) Review of the notifications pursuant to Article 2.6 and 2.7(a)

14. Pursuant to Articles 2.6 and 2.7(a), the Members which had maintained restrictions under the MFA had to notify their respective integration programmes to the GATT Secretariat no later than 1 October 1994, in accordance with a decision taken by Ministers at Marrakesh on 15 April 1994. Canada, the European Community, Norway and the United States submitted notifications under these provisions within the deadline prescribed; the GATT Secretariat circulated them to other participants for information. Subsequently, these notifications were made available to the TMB for the purposes of Article 2.21. In reviewing these notifications the TMB

noted that, in accordance with Article 2.6, the volume of products integrated by Canada, the European Community, Norway and the United States amounted to at least 16 per cent of the total volume of the respective Members' 1990 imports of the products falling under the coverage of the ATC. Canada integrated 16.36 per cent of the volume of its 1990 imports of the products in the Annex, of which 59 per cent were of tops and yarns, 26 per cent of fabrics, 8 per cent of made-ups and 7 per cent of clothing products. The European Community<sup>3</sup> integrated 16.4 per cent of the volume of the Community's 1990 imports of the products in the Annex, of which 27 per cent were tops and yarns, 49 per cent fabrics, 22 per cent made-ups and 2 per cent clothing products.<sup>4</sup> Norway integrated 16.26 per cent of the volume of its 1990 imports of the products in the Annex, of which 22 per cent were tops and yarns, 73 per cent fabrics, 4 per cent made-ups and 1 per cent clothing products.<sup>5</sup> The United States integrated 16.21 per cent of the volume of its 1990 imports of the products in the Annex, of which 52 per cent were tops and yarns, 15 per cent fabrics, 20 per cent made-ups and 13 per cent clothing products.

15. In its 1996 Report, adopted in the context of the preparation for the Singapore Ministerial Conference, the TMB made the following additional observations with respect to the first stage of integration programmes notified under Articles 2.6 and 2.7(a):

- Notwithstanding the provisions of Articles 2.6 and 2.7, the TMB was aware that - with the exception of Canada affecting one product (work gloves) - the products thus integrated were not, prior to their integration into GATT 1994, subject to quantitative restrictions notified under Article 2.1;
- Article 2.6 required Members to integrate products selected from each of the four groups mentioned in paragraph 11 above; the integration programmes submitted by the Members concerned for the first stage of integration met this requirement. The TMB observed, however, that the share of tops and yarns, and fabrics in the integration programmes notified under Articles 2.6 and 2.7(a) was significantly higher than that of made-up textile products and clothing;
- Article 2.6 also required Members to integrate in the first stage products which accounted for not less than 16 per cent of the total volume of the Member's 1990 imports of the products in the Annex. However, the TMB observed that as the products integrated were concentrated in the relatively less value-added range of products, it would appear that the share of products integrated, expressed in value terms, was smaller than that expressed in volume;
- The integration of a product into GATT 1994 pursuant to Article 2.6 had two consequences: first, the provisions of Article 6 of the ATC cannot be invoked with respect to imports of such product; second, any quantitative restriction on this product notified under Article 2 of the ATC is eliminated;
- In light of the first of the observations under this paragraph, it could be observed that the increases in access to the markets of Members having notified restrictions

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<sup>3</sup>EC 12 (at the time the notification was made, the European Community comprised 12 Member States; since it was anticipated that it would comprise 16 Member States by 1 January 1995, data for those 16 Members were also provided).

<sup>4</sup>The percentages indicated may have to be revised (see paragraphs 17 to 23 below).

<sup>5</sup>The percentages indicated may have to be revised (see paragraphs 33 and 34 below).

pursuant to Article 2.1 had been limited in the first stage, with one exception, to the annual increases in the levels of restrictions required under Article(s) 2.13 and, if applicable, 2.18, and in one case to the recourse to the provision of Article 2.15 (see paragraph 203 below);

- The TMB was aware of the concern expressed by several Members that, should the pattern of selection of the products to be integrated in the second and third stages pursuant to Articles 2.8(a) and (b) reproduce that of the first stage, the implementation of the integration of the textiles and clothing sector into GATT 1994 on 1 January 2005, as stated in Article 2.8(c), would prove difficult. The TMB was equally aware that, in the view of some other Members, the eventual integration of the textiles and clothing sector into GATT had to be seen also in the context of the liberalization built into the ATC in Articles 2.13, 2.14 and, if applicable, 2.18 (G/L/113).

(b) Advanced integration of products during Stage 1

16. Article 2.10 states, *inter alia*, that "nothing in this Agreement shall prevent a Member which has submitted an integration programme pursuant to paragraph 6 or 8 [of Article 2] from integrating products into GATT 1994 earlier than provided for in such a programme". The TMB noted that no notification had been made under this provision with respect to the first stage of integration by a Member having submitted an integration programme under Article 2.7(a).

(c) Further examination of certain aspects of the integration programme submitted by the European Community pursuant to Articles 2.6 and 2.7(a), at the request of Colombia

17. In February 1997, the TMB received a notification from Colombia, also on behalf of a number of other WTO Members that are also members of the International Textiles and Clothing Bureau (ITCB), 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. In particular, in the view of Colombia, the European Community had integrated in the first stage certain textile and clothing products of HS Chapters 30 to 49 and 64 to 96 for which the European Community had counted the volume of trade for the entire six-digit HS lines instead of counting trade for the specific products of the "ex-positions" referred to under the ATC. According to Colombia, if the volume of imports which did not qualify were excluded, the EC's integration programme would account for less than 16 per cent of the EC's total volume of 1990 imports.

18. The TMB considered this communication at its twenty-eighth, twenty-ninth and thirtieth meetings, with the participation of both Colombia and the European Community. The arguments and observations of Colombia and the European Community related to certain six-digit HS lines where the Annex to the ATC refers to "ex-positions" together with a description of the relevant products. These covered:

- woven, knitted or non-woven fabrics coated, covered or laminated with plastics (in HS Chapter 39);
- luggage, handbags and flatgoods with an outer surface predominantly of textile materials (in HS Chapter 42);

- certain footwear mainly of textile material, as well as leg warmers and gaiters of textile material (in HS Chapter 64);
- yarns and woven fabrics of fibre glass (in HS Chapter 70); and
- woven ribbons, of man-made fibres, other than those measuring less than 30 mm in width and permanently put up in cartridges (in HS Chapter 96).

19. Following the detailed, chapter-by-chapter review, the TMB reached, *inter alia*, the following overall conclusions.

20. The TMB agreed with Colombia that the integration programme of the European Community for the first stage had also included certain imports which did not qualify for integration as they did not fall under the coverage of the ATC, as defined in its Annex. The TMB observed that with respect to a number of HS "ex-positions" concerned this was not contested by the European Community, which in particular referred to difficulties or the impossibility of providing trade data for these products strictly conforming to the description contained in the Annex to the ATC.

21. The TMB was of the view, on the other hand, that the likely share of non-ATC imports and of the corresponding trade volume thus not properly integrated, was less than claimed by Colombia. This followed from the fact that not all the discrepancies alleged by Colombia seemed, following careful analysis, to be well-founded, and that Colombia had not corrected the figure related to the EC's total volume of imports in 1990 by subtracting the amount that was believed to be non-ATC trade.

22. Also due to the lack of reliable statistical information, the TMB was not in a position to pronounce itself on the magnitude of the discrepancies which had occurred. It appeared, however, possible that after necessary corrections, the EC's integration programme could account for less than 16 per cent of the EC's total volume of 1990 imports. The TMB believed that the size of the shortfall, if any, could best be assessed by the importing Member itself.

23. The TMB, therefore, recommended that the European Community re-examine its first stage integration programme in light of the TMB's comments and findings, as reflected in its detailed report. The TMB expected the European Community to report on the results of this examination as rapidly as possible. The TMB agreed that it would keep this matter under review (G/TMB/R/29). The European Community subsequently informed the TMB that, following the TMB's recommendation, it was reviewing its integration programme and would communicate the results of this review to the TMB as soon as completed.

2. Integration Pursuant to Articles 2.6 and 2.7(b) of the ATC, Including Notifications Pursuant to Article 6.1

24. According to Article 2.9, "Members which have notified, pursuant to paragraph 1 of Article 6, their intention not to retain the right to use the provisions of Article 6 shall, for the purposes of this Agreement, be deemed to have integrated their textiles and clothing products into GATT 1994. Such Members shall, therefore, be exempted from complying with the provisions of paragraphs 6 to 8 and 11" of the same Article. The notifications received under Articles 2.6 and 2.7(b) had, therefore, to be examined in the context of notifications made pursuant to Article 6.1.

(a) Article 6.1 notifications

25. Article 6.1 states that "Members not maintaining restrictions falling under Article 2 shall notify the TMB ... as to whether or not they wish to retain the right to use the provisions of this Article". Sixty-four WTO Members notified the TMB to this effect, several after the deadline specified by the ATC. The following 55 Members notified that they wished to retain the right to use the provisions of Article 6: Argentina, Bangladesh, Bolivia, Brazil, Burkina Faso, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, the Czech Republic, the Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Honduras, Hungary, India, Indonesia, Israel, Jamaica, Japan, Kenya, Korea, Lesotho, Liechtenstein, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Nicaragua, Nigeria, Pakistan, Paraguay, Peru, the Philippines, Poland, Romania, Saint Kitts and Nevis, Senegal, the Slovak Republic, Slovenia, South Africa, Sri Lanka, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, the United Arab Emirates, Uruguay, Venezuela and Zambia. With respect to notifications addressed to it after the deadline had passed, the TMB stated that its taking note of late notifications was without prejudice to the legal status of such notifications.

26. The following nine WTO Members notified that they did not wish to retain the right to use the provisions of Article 6: Australia, Brunei Darussalam, Chile, Cuba, Hong Kong<sup>6</sup>, Iceland, Macau, New Zealand and Singapore. The TMB took note of these notifications.

27. The TMB had drawn the attention<sup>7</sup> of Members to the fact that the Members which did not maintain restrictions falling under Article 2 had, pursuant to Article 6.1, the obligation to notify within a specific time-frame whether or not they wished to retain the right to use the provisions of Article 6. A significant number of such Members have not submitted the notification under this provision.

(b) Review of notifications pursuant to Articles 2.6 and 2.7(b)

28. Forty-five Members submitted notifications pursuant to Articles 2.6 and 2.7(b) (Argentina, Bangladesh, Bolivia, Brazil, Colombia, Costa Rica, Cyprus, the Czech Republic, the Dominican Republic, Egypt, El Salvador, Guatemala, Honduras, Hungary, India, Indonesia, Israel, Japan, Korea, Liechtenstein, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Nicaragua, Pakistan, Paraguay, Peru, the Philippines, Poland, Romania, Saint Kitts and Nevis, the Slovak Republic, Slovenia, South Africa, Sri Lanka, Switzerland, Thailand, Tunisia, Turkey, Uruguay, Venezuela and Zambia). The TMB completed the review of 42 of them. In this review the TMB noted that in all cases the products integrated amounted to at least 16 per cent<sup>8</sup> of the respective Members' total imports of the products falling under the coverage of the ATC (in most cases in volume of 1990 imports, in some other cases in value and/or with a different base-year), and that in all cases products from each of the four groups (tops and yarns, fabrics, made-up textile products, and clothing) had been integrated. The review of the notifications made by Israel, Myanmar and Saint Kitts and Nevis could not be concluded without the submission of additional information sought by the TMB from these Members.

29. As noted above, the TMB in some instances took note of integration programmes which, in certain respects, did not fully meet the technical criteria established under Article 2.6. This concerned cases where the data were not available in volume, or for the year 1990, or where the share of integration was calculated relative to data for the textiles and clothing sector as a whole

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<sup>6</sup>The name of this Member has become "Hong Kong, China" as from 1 July 1997 - see WT/L/218.

<sup>7</sup>G/L/113, paragraph 19.

<sup>8</sup>See also paragraphs 33 and 34 below.

since data for the exact product coverage of the ATC were not available. Prior to taking note of such notifications, the TMB was assured that no better data could be obtained (G/L/113, paragraph 21).

30. In its 1996 Report, adopted in the context of the preparation for the Singapore Ministerial Conference (G/L/113), the TMB made, *inter alia*, the following observations with respect to the first stage of integration programmes notified under Articles 2.6 and 2.7(b):

- Article 2.6 requires Members to integrate products selected from each of the four following groups: tops and yarns, fabrics, made-up textile products, and clothing. The integration programmes submitted by Members pursuant to Articles 2.6 and 2.7(b) met this requirement;
- The TMB also observed that nine<sup>9</sup> Members (see paragraph 26) had notified their choice not to retain the right to use the provisions of Article 6 and that for those Members the products falling under the coverage of the ATC had been integrated into GATT 1994 as from 1 January 1995. The TMB commends these Members for having opted for this approach;
- The TMB observed furthermore that among the 55<sup>9</sup> Members which had chosen to retain the right to use the provisions of Article 6, ten<sup>9</sup> (Burkina Faso, Côte d'Ivoire, Ecuador, Jamaica, Kenya, Lesotho, Nigeria, Senegal, Trinidad and Tobago, and the United Arab Emirates) had not submitted a notification under Articles 2.6 and 2.7(b). The TMB wished to draw the attention of Members to the fact that the notification requirement contained in Article 6.1, and the resulting notification requirement contained in Article 2.7(b), were mandatory and had to be submitted to the TMB within prescribed deadlines;
- The TMB noted that in some cases products integrated under Articles 2.6 and 2.7(b) had already been subject to quantitative restrictions, notified under Article 3 and justified under a GATT 1994 provision, and that such restrictions were not affected by the integration of the products concerned. Among the 45<sup>9</sup> Members which submitted a notification pursuant to Articles 2.6 and 2.7(b), 12<sup>9</sup> had made notifications under Article 3.1 invoking justification under a GATT 1994 provision for the restrictions notified (see paragraphs 230 to 234 below).

31. In addition, the TMB noted that among those 45 Members, four<sup>10</sup> had notified a phase-out programme pursuant to Article 3.2. Restrictions in place under these programmes were not affected by the respective integration programmes notified.

(c) Advanced integration of products during Stage 1

32. Article 2.10 states, *inter alia*, that "nothing in this Agreement shall prevent a Member which has submitted an integration programme pursuant to paragraph 6 or 8 [of Article 2] from integrating products into GATT 1994 earlier than provided for in such a programme". The TMB

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<sup>9</sup>The relevant number has been updated to take into account the new notifications received since G/L/113 was prepared.

<sup>10</sup>One Member (Cyprus) notified both restrictions for which a GATT 1994 provision had been invoked, and restrictions with respect to which a phase-out programme was submitted, by which such restrictions were brought into conformity with GATT 1994.

noted that no notification had been made under this provision with respect to the first stage of integration by a Member having submitted an integration programme under Article 2.7(b).

3. *Systemic Issues Arising out of the Review of the Communications by Colombia, Pursuant to Article 2.21, Referring to Particular Aspects of Integration Programmes Notified under Articles 2.6, 2.7(a) and 2.7(b)*

(a) *Issues arising out of the examination of certain aspects of the European Community's integration programme for the first stage*

33. During the review mentioned in paragraphs 17 to 23 above, the TMB noted the statement of the EC's representative that several other WTO Members had included in the list of products to be integrated in the first (and second) stage(s) of implementation of the ATC products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC (indicated as "ex" HS lines in the ATC Annex).

34. With regard to the programmes for the first stage of integration which had already been reviewed by the TMB, the Body noted that it had not ascertained whether the statistical information provided by Members for the integrated products under these HS lines referred to the whole HS lines or only to that portion of the HS lines covered by the ATC. The TMB, therefore, decided to verify with the 21 Members concerned (Brazil, Costa Rica, Cyprus, the Czech Republic, Hungary, Japan, Liechtenstein, Mexico, Norway, Pakistan, the Philippines, Poland, Saint Kitts and Nevis, Slovenia, South Africa, Sri Lanka, Switzerland, Thailand, Turkey, the United States and Uruguay) whether the volume of imports they had notified for the "ex HS lines" (and, consequently, the data for total imports) related precisely to the products described in the Annex.

35. The TMB has to date received replies to these questions from seven of the Members referred to in paragraph 34 above (the Czech Republic, Hungary, Japan, Norway, South Africa, Sri Lanka and Turkey). South Africa answered that the trade counted for the "ex items" contained in its list of products integrated only pertained to those products covered by the ATC, and provided statistics to substantiate this answer. The review of the other responses has not yet been finalized.

36. In a subsequent communication, the European Community, stressing the importance that the same principles, which had been applied in respect of the TMB's findings in the matter raised by Colombia, should be applied to other Members in the same position, requested the TMB, pursuant to Article 2.21, to review whether or not the Members which had integrated products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC had provided statistical data for the whole HS lines or only for those portions of the HS lines covered by the ATC. This notification will be reviewed at a subsequent meeting.

(b) *Issues related to certain aspects of the implementation by Members of their programmes of integration*

37. In November 1996, Colombia addressed, also on behalf of several other WTO Members that are also members of the ITCB, a communication to the TMB relating to particular aspects pertaining to the implementation by WTO Members of the programme of integration of the ATC, such as the conversion factors used for the purpose of calculating the import volume of the products to be integrated, as well as the lack of uniformity in the classification of products in one of the four product groups envisaged in Articles 2.6 and 2.8. With regard to conversion factors, Colombia's contention was that the verification of integrated volumes would be facilitated if the

Members were requested to notify the conversion factors also in the notification of their integration programmes submitted to the TMB under Article 2.8. With respect to product classification, Colombia was of the view that uniformity in the classification of the HS lines in the Annex would be desirable, and asked the TMB to provide suitable guidance to the Members.

38. The TMB considered the issues raised in this communication at its twenty-third meeting (G/TMB/R/22, paragraph 13), and addressed them in a written reply to Colombia. In this reply, *inter alia*, in view of the fact that at the time of the review by the TMB the deadline for notification had almost been reached, the TMB assumed that, with respect to conversion factors, it might perhaps be of greater importance to obtain relevant information from those WTO Members which maintain restrictions under Article 2. To the TMB's knowledge, conversion factors were available with respect to the United States, and were not necessary for the European Community and Norway, which collected statistical data in a uniform volume unit. In addition, the European Community has notified its conversion factors in the context of its notification under Article 2.1. With respect to Canada, the TMB noted that, during the Uruguay Round, the Negotiating Group on Textiles and Clothing had been provided with trade data in volume terms, on a line-by-line basis, for the products included in the Annex to the ATC. Such data could be used to calculate the conversion factors. Moreover, the TMB understood that such data could again be provided by Canada early in 1997.<sup>11</sup> As to the categorization of products in the four groups mentioned in Articles 2.6 and 2.8 of the ATC, the TMB felt that a problem would only exist if, at a given stage of integration, all products in a given group were, in the view of one or more WTO Members, inadequately placed in that group. Therefore, the TMB considered that the implication of a lack of a fully harmonized approach might not necessarily affect the integration programmes themselves. The TMB would, however, in its review of integration programmes, pay particular attention to the identification of any discrepancies there might be to the classification of products in any of the four groups.

B. SECOND STAGE OF INTEGRATION, TO BE IMPLEMENTED ON  
1 JANUARY 1998

39. Article 2.8(a) states that "the remaining products, i.e. the products not integrated into GATT 1994 under paragraph 6 [of Article 2], shall be integrated, in terms of HS lines or categories, ... as follows: on the first day of the 37th month that the WTO Agreement is in effect [i.e. 1 January 1998], products which accounted for not less than 17 per cent of the total volume of the Member's 1990 imports of the products in the Annex. The products to be integrated by the Members shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing".

40. Article 2.11 states that "the respective programmes of integration, in pursuance of paragraph 8, shall be notified in detail to the TMB at least 12 months before their coming into effect [i.e. by 1 January 1997], and circulated by the TMB to all Members". The TMB has accordingly circulated the notifications it has received pursuant to Article 2.8(a) to WTO Members, and started to review these integration programmes pursuant to Article 2.21.

1. Review of the Notifications Pursuant to Article 2.8(a) Made by Members Maintaining  
Restrictions Falling under Article 2.1

41. In reviewing these notifications the TMB noted that, in accordance with Article 2.8(a), the volume of products to be integrated by Canada, the European Community, Norway and the

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<sup>11</sup>Conversion factors were provided by Canada in May 1997.

United States amounted to at least 17 per cent of the total volume of the respective Members' 1990 imports of the products falling under the coverage of the ATC. Canada would integrate 18.61 per cent of the volume of its 1990 imports of the products falling under the coverage of the ATC, of which 3.5 per cent were tops and yarns, 11.3 per cent fabrics, 76.4 per cent made-up textile products and 8.8 per cent clothing products. The TMB noted that Canada would integrate 30 products, of which five were of tops and yarns, three of fabrics, 16 of made-up textile products and of six of clothing. The TMB further noted that two products (handbags of textile materials and tailored-collar shirts) with respect to which Canada maintained restrictions under the ATC had been included in the integration programme and that, therefore, such restrictions would be eliminated on 1 January 1998. Restraints on these two products affected overall 22 WTO Members. In addition, Canada had informed the TMB that, pending the integration of tailored-collar shirts into the GATT 1994 on 1 January 1998, and with effect from 1 July 1997, it would not enforce existing restrictions on imports of tailored-collar shirts from restrained WTO Members, and that the Members concerned had been informed by Canada accordingly.

42. The European Community would integrate 17.99 per cent<sup>12</sup> of the total volume of its 1990 imports of the products falling under the coverage of the ATC, of which 65 per cent were tops and yarns, 12 per cent fabrics, 11 per cent made-up textiles and 12 per cent clothing products. The TMB noted that the European Community would integrate 23 EC product categories, of which four of tops and yarns, four of fabrics, six of made-up textile products and nine of clothing. The TMB further noted that 12 EC categories with respect to which the European Community maintained restrictions under the ATC had been included in the integration programme and that, therefore, such restrictions would be eliminated on 1 January 1998. Restraints on these 12 EC categories affected overall five WTO Members.

43. Norway would integrate 24.26 per cent<sup>12</sup> of the total volume of its 1990 imports of the products falling under the coverage of the ATC, of which 27 per cent were tops and yarns, 10 per cent fabrics, 46 per cent made-ups and 17 per cent clothing products. The TMB observed that the notification contained no product for which restrictions were currently maintained by Norway. In this regard, the TMB noted the statement by Norway that it "is committed to a continuation of a policy of gradual liberalization and expects to be able to notify later this year to the TMB (and the WTO Members directly concerned) further steps taken pursuant to Article 2, Section 15, of the ATC". The TMB also noted, however, that one of the products (HS No. 6210) for which the restrictions, affecting 16 WTO Members, had been eliminated as from 1 January 1996 pursuant to paragraph 15 of Article 2, would be integrated.

44. The United States would integrate 17.03 per cent of the total volume of its 1990 imports of the products falling under the coverage of the ATC, of which 47 per cent were tops and yarns, 14.7 per cent fabrics, 26.7 per cent made-ups and 11.6 per cent clothing products. The TMB noted that the United States would integrate 38 US product categories in their entirety (one of fabric, three of made-ups and 34 of clothing), and 12 US product categories partially (one of yarns, six of made-ups and five of clothing). The TMB further noted that 24 US categories or parts of categories with respect to which the United States maintained restrictions under the ATC had been included in the integration programme and that, therefore, such restrictions would be eliminated on 1 January 1998. Restraints on these 24 US categories or part of categories affected overall 14 WTO Members. Some of the restraints which would be eliminated were in the form of specific limits (i.e. the categories themselves were under quantitative limit), while, in some other cases, the category integrated was, prior to its integration, subject to a quantitative restriction because, although the category itself was not under specific limit, it fell under an aggregate or group limit.

2. *Review of notifications Pursuant to Article 2.8(a) Made by Members which have, Pursuant to Paragraph 1 of Article 6, Retained the Right to use the Provisions of Article 6*

(a) *Review of the notifications pursuant to Article 2.8(a) made by Members which have, pursuant to paragraph 1 of Article 6, retained the right to use the provisions of Article 6*

45. Among the 55 Members which, pursuant to Article 6.1, retained the right to use the provisions of Article 6, 45 of which submitted an integration programme for Stage 1, 36 (Argentina, Bolivia, Brazil, Colombia, Costa Rica, the Czech Republic, the Dominican Republic, Egypt, El Salvador, Hungary, India, Indonesia, Japan, Korea, Liechtenstein, Malaysia, Malta, Mauritius, Mexico, Morocco, Nicaragua, Pakistan, Peru, the Philippines, Poland, Romania, Saint Kitts and Nevis, the Slovak Republic, Slovenia, Sri Lanka, Switzerland,

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<sup>12</sup>The percentages indicated may have to be revised (see paragraphs 48 and 49).

Thailand, Tunisia, Turkey, Uruguay and Venezuela) notified an integration programme under Article 2.8(a), and nine did not (Bangladesh, Cyprus, Guatemala, Honduras, Israel, Myanmar, Paraguay, South Africa and Zambia). The TMB completed the review of 17 of the notifications received. In its review the TMB noted that in all cases the products integrated amounted to at least 17 per cent of the respective Members' total imports of the products falling under the coverage of the ATC (in most cases in volume of 1990 imports, in some other cases in value and/or with a different base-year), and that in all cases products from each of the four groups (tops and yarns, fabrics, made-up textile products, and clothing) had been integrated. With respect to those notifications for which the review was not completed, the TMB decided to seek further information and clarification from the Members concerned, and to revert to its review at a subsequent meeting, when satisfactory replies would have been provided.

46. As was the case for the notifications made pursuant to Article 2.7(b), the TMB in some instances took note of integration programmes which, in certain respects, did not fully meet the technical criteria established under Article 2.8(a). This concerned cases where the data were not available in volume, or for the year 1990, or where the share of integration was calculated relative to data for the textiles and clothing sector as a whole since data for the exact product coverage of the ATC were not available. Prior to taking note of such notifications, the TMB was assured that no better data could be obtained, and verified that the basis of the data for each Member was the same as that used for its first stage of integration. Therefore, their respective stages of integration would be implemented in a consistent manner.

(b) Advanced integration of products during Stage 2

47. Article 2.10 states, *inter alia*, that "nothing in this Agreement shall prevent a Member which has submitted an integration programme pursuant to paragraph 6 or 8 [of Article 2] from integrating products into GATT 1994 earlier than provided for in such a programme". The TMB noted that Turkey had availed itself of the provisions of Article 2.10 to integrate with effect as from 1 January 1998 some products which would form part of Turkey's third stage of integration (see G/TMB/N/240).

3. Systemic Issues arising out of the Review of the Communication by Colombia, Pursuant to Article 2.21, Referring to Particular Aspects of Integration Programmes Notified under Articles 2.8(a) and 2.11

48. During the review mentioned in paragraphs 17 to 23 above, the TMB noted the statement of the EC's representative that several other WTO Members had included in the list of products to be integrated in the second stage of implementation of the ATC products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC (indicated as "ex HS lines" in the ATC Annex).

49. Therefore, prior to finalizing its review of the notifications received pursuant to Articles 2.8(a) and 2.11, the TMB decided to verify with the Members concerned that the volume of imports they had notified for the "ex HS lines" (and, consequently, the data for total imports) related precisely to the products described in the Annex. This verification was concluded with respect to Canada and the United States, which confirmed that the volume of imports notified for their respective second stages of integration related precisely to the products described in the Annex.

50. In a subsequent communication, the European Community, stressing the importance that the same principles, which had been applied in respect of the TMB's findings in the matter raised by Colombia, should be applied to other Members in the same position, requested the TMB,

pursuant to Article 2.21, to review whether or not the Members which had integrated products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC had provided statistical data for the whole HS lines or only for those portions of the HS lines covered by the ATC. This notification will be reviewed at a subsequent meeting.

C. FURTHER ASSESSMENT AND OBSERVATIONS OF THE TMB WITH RESPECT TO THE SECOND STAGE INTEGRATION PROGRAMMES

1. Integration Programmes of Members Referred to in Article 2.7(a)

51. As indicated above, Members referred to in Article 2.7(a), with the exception of Norway<sup>13</sup>, also included in their respective integration programmes for Stage 2 some products or categories or parts of categories with respect to which they maintained restrictions affecting a number of Members, as notified pursuant to Article 2.1. As a result of the implementation of the integration, these restrictions will be eliminated as from 1 January 1998.

52. In reply to the TMB's request, the United States provided information regarding the restrictions applicable to WTO Members affected by the US' second stage of integration (see Table 1). The TMB understood that some of the restrictions were in the form of specific limits, while others, though not being subjected to specific limits, fell under an aggregate or group limit. In giving this information the United States did not specify the form of the applicable restraint (i.e. specific limit, aggregate or group limit). On the basis of the notifications submitted by the United States pursuant to Article 2.1 it can be ascertained that:

- All of the categories are at present under specific limit and will be integrated, therefore the restriction will be fully eliminated in the following cases:
  - category 239 (except diapers) - affecting Hong Kong, Korea, Pakistan, the Philippines, Singapore and Thailand;
  - category 353/354/653/654 - affecting Korea (the United States maintains one specific limit for the combined four categories against imports from Korea);
  - category 632 - affecting Korea;
- In all other cases in respect of Members listed in the information provided by the United States, the United States subjects imports to group or aggregate limits (in a few categories there are specific limits affecting some Members - category 359 - five Members; category 459 - one Member; category 659 - five Members; category 369 - seven Members; category 669 - three Members - but the HS lines to be integrated are not covered by these specific limits and thus these restrictions will not be eliminated as a result of integration, except that the parts of categories concerned will no longer fall under group or aggregate limits);
- In the listing submitted by the United States, Thailand was omitted in respect of categories 369 and 669 (group or aggregate limits).

53. In light of the above it can be established that with the implementation of integration for Stage 2 the United States will eliminate specific limits affecting three categories or combined categories, and altogether six Members. The TMB has no information at its disposal regarding

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<sup>13</sup>See also Chapter IV, paragraph 204.

the rate of utilization of the specific limits by the Members concerned. Neither has it received information at the time of preparing the present report, regarding whether the integration will affect the level of the existing group or aggregate limits (see also Chapter VI, paragraph 265).

**TABLE 1**

RESTRICTIONS APPLICABLE TO WTO MEMBERS  
AFFECTED BY UNITED STATES' SECOND STAGE OF INTEGRATION

Product Grouping	Textile Category	Brief Description	WTO Members
Apparel	239	Babies' apparel, except diapers	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Pakistan, Philippines, Romania, Singapore, Thailand
Apparel	439	Babies' apparel	Bahrain, Brazil, Hong Kong, Indonesia, Macau, Malaysia, Romania, Korea, Philippines, Thailand
Apparel	839	Babies' apparel	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Romania, Thailand
Apparel	349	Body supporting garments	Bahrain, Brazil, Hong Kong, India, Indonesia, Romania, Korea, Malaysia, Philippines, Thailand
Apparel	353	Down apparel	Bahrain, Brazil, Hong Kong, Indonesia, Philippines, Romania, Korea, Malaysia, Thailand
Apparel	354	Down apparel	Bahrain, Brazil, Hong Kong, Indonesia, Malaysia, Philippines, Romania, Korea, Thailand
Apparel	653	Down apparel	Bahrain, Brazil, Hong Kong, Indonesia, Philippines, Romania, Korea, Malaysia, Thailand
Apparel	654	Down apparel	Bahrain, Brazil, Hong Kong, Indonesia, Philippines, Romania, Korea, Malaysia, Thailand
Apparel	359	Footwear	Bahrain, Brazil, Hong Kong, Indonesia, India, Malaysia, Philippines, Korea, Romania, Thailand
Apparel	459	Footwear	Bahrain, Brazil, Hong Kong, Indonesia, Macau, Malaysia, Philippines, Romania, Korea, Thailand
Apparel	659	Footwear	Bahrain, Brazil, Hong Kong, Indonesia, Malaysia, Romania, Korea, Philippines, Thailand
Apparel	859	Footwear	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Romania, Thailand
Apparel	330	Handkerchiefs	Bahrain, Brazil, Hong Kong, Indonesia, India, Romania, Korea, Malaysia, Philippines, Thailand
Apparel	630	Handkerchiefs	Bahrain, Brazil, Hong Kong, India, Indonesia, Romania, Korea, Malaysia, Philippines, Thailand
Apparel	432	Hosiery	Bahrain, Brazil, Hong Kong, Indonesia, Philippines, Korea, Macau, Malaysia, Romania, Thailand
Apparel	632	Hosiery	Bahrain, Brazil, Hong Kong, India, Indonesia, Malaysia, Romania, Korea, Philippines, Thailand
Apparel	832	Hosiery	Bahrain, Hong Kong, India, Indonesia, Malaysia, Philippines, Romania, Korea, Thailand
Fabric	229	Specialty fabric	Brazil, Hong Kong, India, Indonesia, Malaysia, Philippines, Korea, Romania
Made-up	465	Carpets	Brazil, Hong Kong, Indonesia, Macau, Malaysia, Philippines, Romania, Korea
Made-up	665	Carpets	Brazil, Hong Kong, Indonesia, Korea, Malaysia, Philippines
Made-up	469	Carpets, certain wadding & footwear	Brazil, Hong Kong, Indonesia, Macau, Malaysia, Philippines, Korea
Made-up	369	Carpets, certain wadding & footwear	Brazil, Hong Kong, India, Indonesia, Korea, Philippines, Romania, United Arab Emirates
Made-up	669	Certain wadding and footwear	Brazil, Hong Kong, Indonesia, India, Malaysia, Philippines, Korea
Made-up	899	Certain wadding, footwear and silk blends and other vegetable fibres	Romania

54. In reply to the TMB's request for information, the European Community also submitted details regarding those 12 EC product categories in which, as a result of integration to be implemented in Stage 2, restrictions presently applied would be eliminated on 1 January 1998 (see Table 2), affecting overall five WTO Members. The TMB has no information regarding the rate of utilization of the specific limits in the product categories concerned.

Table 2

Restrictions Applicable to WTO Members  
Affected by EC Second Stage of Integration

Category	Description	WTO Members
19	Handkerchiefs	Macau
46	Sheep's or lamb's wool	Brazil, Argentina
61	Narrow woven fabrics	Hong Kong
67	Clothing accessories	Korea
70	Panty-hose and tights of synthetic fibres	Korea
72	Swimwear	Hong Kong
74	Women's or girls' suits	Hong Kong
77	Ski suits	Hong Kong, Korea
86	Corsets	Korea
91	Tents	Korea
100	Textile fabrics, impregnated	Korea
111	Camping goods	Korea

55. As regards Canada, the initial notification submitted pursuant to Articles 2.8(a) and 2.11 included one product which was subject to restraint, handbags of textile materials, and the restriction affected one WTO Member (Korea). In a supplementary notification Canada indicated that tailored-collar shirts, with respect to which Canada maintained restrictions, had also been included in the Stage 2 integration programme and that with effect from 1 July 1997, Canada would not enforce existing restrictions on imports of this product from the 22 WTO Members affected by the restraints. These Members are the following: Bangladesh, Bulgaria, Cuba, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Mauritius, Myanmar, Pakistan, the Philippines, Poland, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand and the United Arab Emirates. The TMB has no information regarding the rate of utilization of the specific limits in the product categories concerned.

56. While observing that the notification made by Norway did not include products currently subject to restrictions, the TMB noted the statement by Norway in reply to the TMB's request for information that "Norway is committed to a continuation of a policy of gradual liberalization and expects to be able to notify later this year to the TMB (and the WTO Members directly concerned) further steps taken pursuant to Article 2, Section 15 of the ATC" (see paragraph 204 above).

57. A brief analysis of the breakdown of the product-groups of the Stage 2 integration programmes notified by Members referred to in Article 2.7(a) shows that while there are non-negligible differences between the respective programmes, at least two of them seem to confirm certain similarities with the overall trends which characterized the approach adopted for Stage 1. The Stage 1 and Stage 2 programmes notified by the United States in particular reveal a noticeable similarity in terms of product structure: above 10 per cent of the volume of 1990 imports integrated in both stages is comprised of tops and yarns, and fabrics (the two groups taken together), with an overwhelming share of tops and yarns; followed by made-ups, while the share of clothing is roughly 2 per cent (in Stage 1 slightly above, in Stage 2 slightly below). The same observation applies to the integration programmes notified by the European Community, as far as the overwhelming share of the first two product groups (tops and yarns, and fabrics) is concerned; the share of these two groups for Stage 1 was above 12 per cent of the 1990 import volume, and for Stage 2 is close to 14 per cent. A shift between the respective share held by tops and yarns, and fabrics can, however, be observed, since during Stage 1 fabrics had a preponderant share which is taken over by tops and yarns for Stage 2. The relative share of made-ups has decreased from Stage 1 to Stage 2, while an opposite trend is applicable to clothing, but the share of clothing products in terms of the 1990 import volume integrated still represents not more than 2.5 per cent. While during Stage 1 the integration implemented by Canada was concentrated on tops and yarns, and fabrics (with an overall share of close to 14 per cent), the bulk of integration for Stage 2 will be effected in made-ups (above 14 per cent of the 1990 import volume). Clothing represented 1.13 and 1.65 per cent, respectively, during the first two integration stages. In Norway's integration programme the preponderant role of fabrics during Stage 1 (close to 12 per cent of the 1990 import volume) will shift to made-ups in Stage 2 (above 11 per cent). A noticeable increase in the share of clothing products can also be observed (0.15 and 4.16 per cent, respectively).

58. While observing that the requirements under Article 2.8(a) are expressed in volume terms, it can be assumed on the basis of the above overview that, at least in the case of the United States and the European Community, the products to be integrated continue to show a concentration in the relatively less value-added range of products, and, it would appear, therefore, that the share of products to be integrated expressed in value terms, will be smaller than that expressed in volume. While this statement can also be valid for the Stage 2 integration programmes notified by Canada and Norway, it would appear that the gap between the shares expressed in volume and in value terms should be significantly smaller, because of the relatively higher share of made-ups.

59. It would also appear that with the exception of products or categories referred to in paragraphs 52 to 55 above, as well as of the restrictions eliminated by Norway as from 1 January 1996 pursuant to Article 2.15, and without prejudice to subsequent possible developments (in particular pursuant to Articles 2.10 and 2.15), the increases in access opportunities under the ATC for restrained products that have not been integrated will be limited during Stage 2 to the increases envisaged in Articles 2.14 and, if applicable, 2.18.

## 2. Integration Programmes of Members Referred to in Article 2.7(b)

60. As far as Stage 2 integration programmes of Members referred to in Article 2.7(b) are concerned, it should be observed that while 45 Members submitted notifications pursuant to Articles 2.6 and 2.7(b), as of 24 July 1997 only 36 notifications had been received pursuant to Articles 2.8(a) and 2.11.

61. Regarding the breakdown of the product groups of these integration programmes for Stage 2, though wide variations between the programmes notified could be observed, in the majority of the cases the share of one or two groups (tops and yarns and/or fabrics) was

significantly higher than those of the other groups. In most of the programmes the share of clothing items remained relatively modest.

62. Of Members submitting phase-out programmes of quantitative restrictions pursuant to Article 3.2(b), Slovenia and Hungary notified the integration of some products which previously were or are, at present, subject to quantitative restrictions. Slovenia, in compliance with the phase-out programme notified (see Chapter V, paragraph 241), eliminated the restrictions affecting 3 four-digit and 73 six-digit HS lines on 1 January 1997. According to the Stage 2 integration programme notified by Slovenia, products belonging to the 3 four-digit HS lines (i.e. 43 six-digit HS lines) and to 52 out of 73 six-digit HS lines will be integrated into GATT 1994 on 1 January 1998. Hungary will integrate worn clothing and other worn articles (HS line 63.09), at present still subject to a global quota for consumer goods (see Chapter V, paragraph 239).

#### D. COMMENTS OF WTO MEMBERS

63. In reply to the TMB's request for information, one Member stated that, in its view, an important concept in the preamble of the ATC is that of "progressive integration", in order to eventually integrate the textiles and clothing sector into GATT on the basis of strengthened GATT rules and disciplines; however, the details of the integration programmes of the major importing Members, as notified to the TMB and circulated to WTO Members, do not reflect any major movement towards this objective. This Member added that, during the negotiations of the ATC, it had raised the issue of "backloading". However, after finalization of the ATC, the problem of "backloading" has only been compounded by the procedure adopted by the major importing countries for the integration of textile products. Some importing countries have technically met the ATC stipulations without any effective integration, in that almost all of the products which they have integrated during the first two stages have either been totally outside restraints or they are covered by group limits or substantially under utilized restraints. Thus, there has been no effective restraints on any of the products which have now been integrated.

64. Another Member stated that it had taken a positive approach to integration by the inclusion of products already covered by restrictions. For those products not yet integrated, and covered by restrictions, the provisions concerning enhanced growth rates contained in Articles 2.13 and 2.14 would operate to give very substantial increases in the volumes covered by restrictions. In addition, in the view of this Member, it should be noted that Members were in full conformity with their legal obligations under the ATC and, given that these concerns were felt during the negotiation of the ATC but no provisions designed to avoid such a result had been included in the Agreement, there was no valid argument of unfulfilled expectation. That Member did not anticipate any difficulties in achieving a balanced integration programme leading to full integration on 1 January 2005. In addition, in the view of this Member, it should be noted that Members had taken broadly similar courses in respect of their integration programs, whether these resulted from Article 2.7(a) or from Article 2.7(b).

#### E. OVERALL ASSESSMENT

65. Under the ATC, the transition to the sole application of GATT 1994 rules and disciplines is to be ensured by progressive integration of the products falling under its scope. The time-frame for this transition is clearly defined in the ATC and the respective stages for integration are firmly established. It is important to reiterate in this context that nine Members opted in favour of not retaining the right to use the provisions of Article 6, therefore they are deemed to have integrated all their textile and clothing products into GATT 1994 as from 1 January 1995 (see paragraph 26 above). On the other hand, the TMB noted that, of the 131 Members of the WTO (112 of which had to notify whether or not they wished to retain the right to use the provisions of Article 6 of

the ATC), 55 had notified that they wished to retain the right to use these provisions, nine that they did not wish to retain that right, while 48 had not notified whether or not they wished to retain the right to use those provisions. Still, the great majority of trade effected in textile and clothing products continue to be governed by the provisions of the ATC. As Stage 1 integration has already been implemented and integration programmes for Stage 2 have been notified, sufficient information is available to Members on the basis of which to reflect on the implications of these two stages. The following paragraphs constitute the TMB's contribution.

66. Under the ATC, requirements in broad terms are the same in respect of all Members which submitted notifications pursuant to Articles 2.6 and 2.8(a). However, the distinction made by Articles 2.7(a) and 2.7(b) between Members is important from two interrelated points of view:

- the trade regime the Members concerned have carried over to the ATC; and
- the implication of integrating products into GATT 1994.

67. Members referred to in Article 2.7(a) notified restrictions maintained under the MFA regime and carried over to the ATC. As indicated earlier, in the case of these Members the integration of a product into GATT 1994 has two consequences: first, the provisions of Article 6 cannot be invoked with respect to imports of such products; second, any quantitative restrictions on such products maintained under Article 2 are, by virtue of integration, eliminated. For the Members referred to in Article 2.7(b), the effect of integration is to remove, with respect to the products integrated, the possibility of having recourse to the provisions of Article 6. It is important to note that of the 45 Members which had submitted notifications pursuant to Articles 2.6 and 2.7(b), only one has invoked, up until now, the provisions of Article 6. Therefore, though the requirements for integration are the same for all Members, the effect of having selected products for integration is substantially different for Members referred to in Articles 2.7(a) and 2.7(b).

68. To comply with the obligations under Articles 2.6 and 2.8(a), the Members concerned had to integrate through Stages 1 and 2 (i.e. as of 1 January 1995 and 1 January 1998, respectively) in total at least 33 per cent of the total volume of their respective 1990 imports of the products in the Annex of the ATC. The products to be integrated had to encompass products from each of the following groups: tops and yarns, fabrics, made-up textile products and clothing. These requirements had been met (except for the consequences of the issue discussed in paragraph 69 below) in all of the integration programmes of which the TMB took note.

69. In the view of the TMB, the systemic problem identified by Colombia with respect to the first stage of integration programme notified by the European Community, but which also applies to a varying extent to a great number of other integration programmes presented for Stage 1 and/or Stage 2 as well, is an important technical issue, which should be handled with particular attention and has to be addressed by the Members concerned. These technical problems have resulted essentially from the non-availability of statistical information corresponding to the precise product description contained in the Annex. As indicated in paragraphs 34 and 49, the TMB decided to verify with all the Members concerned (i.e. with those which integrated products defined in "ex HS lines" either during in Stage 1 or Stage 2, or in both) whether the volume of imports they had integrated in the "ex HS lines" (and, consequently, the data for total imports) related precisely to the products described in the Annex. During its thirty-fifth meeting the TMB had a follow-up discussion on this matter which led to a conclusion according to which, in principle, all the Members which have notified integration programmes may be affected by these technical problems, independently of whether or not they had included "ex HS items" in their respective integration programmes for Stage 1 and/or Stage 2. This results from the fact that in quantifying and notifying the total volume of 1990 imports each Member concerned had to include

the relevant data related to the "ex HS lines" defined in the Annex to the ATC. Therefore, the TMB decided to request that all Members which 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. The TMB expected that Members would report to it on the outcome of such verification (G/TMB/R/34).<sup>14</sup>

70. As to the potential trade effects of the integration programmes notified by Members referred to in Article 2.7(a) the following observations can be made on the basis of analysing Stage 1 and Stage 2 integration taken together:

- In terms of products selected for integration the concentration on the less value-added range of products is confirmed. Tops and yarns and fabrics represent, respectively, roughly 76, 65, 60 and 47 per cent of the import volume so far integrated (taking Stages 1 and 2 together) by the European Community, the United States, Norway and Canada. The share of clothing in the volume of imports integrated remains modest (12.4, 10.6, 7.9 and 7.2 per cent, respectively, in the case of the United States, Norway, Canada and the European Community);
- Regarding specific quota limits eliminated, or to be eliminated as a result of integration, it can be seen that the United States will eliminate eight specific limits out of the 650 initially notified pursuant to Article 2.1; the European Community will eliminate 14 specific quotas out of the 199 notified, while Canada eliminated or will eliminate altogether 28 quotas out of 205. Norway "had not found liberalisation by way of integration the best way to proceed, but had pursued a policy of gradual liberalisation of products under restraint under Article 2.15. Norway was committed to continuing this policy".<sup>15</sup>

71. The ATC includes a number of particular features which should be taken into consideration in providing an overall assessment of the integration process. It is important to note in this regard:

- the broad product coverage of the Annex;
- the use of 1990 as a base-year for providing statistical information;
- the fact that integration is implemented on the basis of total volume of imports as opposed to the respective value;
- that Members are free to choose products/categories for integration provided that their selection meets the essential technical requirements; and
- that, in conformity with the ATC, 67 per cent may remain to be integrated after Stage 2.

72. The notifications made pursuant to Articles 2.6 and 2.8(a) reviewed by the TMB met the requirements contained in these Articles, subject to subsequent corrections to be made, if applicable, to ensure that the volume of imports integrated corresponds fully to the product

<sup>14</sup>This report will be circulated later.

<sup>15</sup>See Chapter IV, paragraph 204.

descriptions contained in the Annex of the ATC. However, up to 67 per cent of the total volume of 1990 imports may remain to be integrated during a period of only 36 months (1 January 2002 to 1 January 2005), and the large majority of the products subject to restrictions under Article 2.1 will have to be integrated during the same period.

73. On the basis of considerations detailed in the preceding paragraphs, the TMB observes that the final objective of the integration of the textiles and clothing sector into the GATT 1994 would be facilitated if the Members would, whenever possible, have recourse to the provisions of Articles 2.10 and 2.15.

74. One preoccupation of the TMB is how the implementation of the integration provisions of the ATC has ensured the full and faithful implementation of the ATC within the time-frames established therein. In the view of the TMB, one of the conditions of such an implementation is a steady progress in terms of structural adjustment and, also, as a result of this, an increased competition in the Members' markets. This interrelation is recognized by Article 1.5, which states the following:

"In order to facilitate the integration of the textiles and clothing sector into GATT 1994, Members should allow for continuous autonomous industrial adjustment and increased competition in their markets."

75. In its request for information addressed to WTO Members the TMB sought information, *inter alia*, on the implementation of Article 1.5. Only two Members provided replies to this specific issue. One Member (Colombia) stated that, in accordance with Article 1.5, it allows competition in its domestic market, as reflected in the absence of quantitative restrictions and the application of actual tariffs which are lower than the maximum bound rates.

76. Another Member (the European Community) explained that the textiles and clothing sector, which occupied a central position with over 2.2 million employees and contributed to about 4.2 per cent of value added in the manufacturing sector, had faced over recent years constant revaluation of methods, technologies and modes of organization, partly caused by external factors such as the bad external conjuncture, the entry into the market of new producers and new technological developments, but also internal factors of adaptation and reorganisation. Despite positive signs in respect of exports, production had fallen in 1996 and, as a result, a further 100,000 jobs had been lost during that year, in addition to the 600,000 jobs lost, and some 20,000 enterprises closed, between 1990 and 1995. Against this background the textiles and clothing sector had, nonetheless, improved its competitiveness at an international level in particular as a result of its specialisation in the high added value end of the sector and an active export strategy. A series of EC programmes assisted structural adjustment, such as assistance to regions or to the requalification or conversion of workers most affected by permanent adaptation, programmes to assist technological research and development and small and medium enterprises. The textiles and clothing sectors were in a position to take advantage of such programmes.

77. Apart from the above indications, the TMB does not have information or empirical evidence regarding what has been the progress and accomplishment in terms of increasing the competition and implementing autonomous industrial adjustment. The TMB believes that it would be useful to have a better appreciation of the progress and trends of autonomous industrial adjustment, as foreseen in Article 1.5.

### **III. APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM**

78. This Chapter describes all the developments which followed the requests for consultation which had been made by Members pursuant to Article 6 of the ATC, on a case-by-case basis, either within the framework of the ATC (including actions pursuant to Articles 8.5, 8.6, 8.7 or 8.10), or within the broader WTO framework (such as the Dispute Settlement Understanding (DSU)).

A. INTRODUCTION

79. Article 6 of the ATC provides for the possibility of applying transitional safeguard measures on imports of products covered by the ATC and not yet integrated into GATT 1994 that cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Article 6.1 specifies that the transitional safeguard should be applied as sparingly as possible, consistently with the provisions of Article 6 and the effective implementation of the integration process under the ATC. According to Article 6.7, "the Member proposing to take safeguard action shall seek consultations with the Member or Members which would be affected by such action". Such consultations may result, if no agreement is reached, in a restraint measure being applied unilaterally by the importing Member under Article 6.10, or in a restraint measure being agreed between the parties and notified under Article 6.9. In cases where a restraint measure is imposed unilaterally the TMB shall, according to Article 6.10, "promptly conduct an examination of the matter, including the determination of serious damage, or actual threat thereof, and its causes, and make appropriate recommendations to the Members concerned within 30 days". In cases where a measure is agreed between the Members, Article 6.9 states that "the TMB shall determine whether the agreement is justified in accordance with the provisions of this Article. ... The TMB may make such recommendations as it deems appropriate to the Members concerned". There may also be cases where, as a result of such consultations, the importing Member may decide not to introduce the safeguard measure envisaged. In addition, Article 6.11 provides that "in highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10 may be taken provisionally on the condition that the request for consultations and notification to the TMB shall be effected within no more than five working days after taking the action". In such cases, if consultations do not produce agreement, the TMB shall promptly conduct an examination of the matter, and make appropriate recommendations to the Members concerned within 30 days of the notification of the conclusion of consultations. If consultations do produce agreement, such agreement shall be notified to the TMB by the Members concerned, to which the TMB may make such recommendations as it deems appropriate.

80. Articles 6.2, 6.3 and 6.4 establish parameters for taking safeguard action under the ATC. These parameters have to be considered by the Members and by the TMB in assessing the conformity of an action with the ATC. Article 6.2 relates to the determination by a Member, and its demonstration to the Member or Members concerned, and eventually to the TMB, that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Serious damage or actual threat thereof must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference. Article 6.3 specifies the economic variables that have to be examined by the Member taking the action in making a determination of serious damage, or actual threat thereof. Article 6.4 outlines circumstances under which such serious damage, or actual threat thereof, can be attributed to certain Members.

81. Article 8.10 provides the possibility to a Member which "considers itself unable to conform with the recommendations of the TMB", to "provide the TMB with the reasons therefor not later than one month after receipt of such recommendations. Following thorough

consideration of the reasons given, the TMB shall issue any further recommendations it considers appropriate forthwith. If, after such further recommendations, the matter remains unresolved, either Member may bring the matter before the Dispute Settlement Body and invoke paragraph 2 of Article XXIII of GATT 1994 and the relevant provisions of the Dispute Settlement Understanding". The TMB has received two such notifications and since both were related to recommendations adopted by the TMB in the context of its consideration of particular safeguard measures, their respective review is included in this Chapter (see paragraphs 130 and 152 to 158 below).

82. Article 8.5 states that "in the absence of any mutually agreed solution in the bilateral consultations provided for in this Agreement, the TMB shall, at the request of either Member, and following a thorough and prompt consideration of the matter, make recommendations to the Members concerned". The TMB has received three notifications under this provision, one of which is related to the application of a particular safeguard measure and is, therefore, discussed in this Chapter (see paragraphs 101 and 102 below). (The two other notifications under this Article are related to issues pertaining to Articles 4 and 5 of the ATC and are discussed in Chapters VI and VII.)

83. Article 8.6 states that "at the request of any Member, the TMB shall review promptly any particular matter which that Member considers to be detrimental to its interests under this Agreement and where consultations between it and the Member or Members concerned have failed to produce a mutually satisfactory solution. On such matters, the TMB may make such observations as it deems appropriate to the Members concerned and for the purposes of the review provided for in paragraph 11". The TMB has received four notifications under this provision of the ATC, which were related to the application of particular safeguard measures; they are, therefore, discussed in the context of this Chapter (see paragraphs 101 and 102, 116, 121 to 127 and 166 to 170 below).

84. Article 8.7 states that "before formulating its recommendations or observations, the TMB shall invite participation of such Members as may be directly affected by the matter in question". Two Members have referred to this provision in their notification and, since such notifications are related to the application of a particular safeguard measure, they are, therefore, discussed in the context of this Chapter (see paragraphs 94 and 121 to 127 below). In addition, in all other instances where the TMB had to formulate a recommendation or an observation pursuant to Article 8, it did so after having invited the Member or Members directly affected by the matter in question.

85. The United States made 26 requests for consultation pursuant to Article 6.7: twenty-four in 1995 (on products imported from Brazil, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Hong Kong, India, Jamaica, the Philippines, Sri Lanka, Thailand and Turkey), one in 1996 (*vis-a-vis* El Salvador) and one in 1997 (on products imported from Pakistan). Eleven resulted in restraint measures being agreed either during the consultation period, prior to, or during the review of the measure by the TMB (in addition, one restraint measure was agreed after the TMB had completed its review of the action pursuant to Article 6.10). In two cases the United States eventually decided not to apply a safeguard measure. Five unilaterally applied measures were dropped by the United States before their review by the TMB, and an additional one during the review. The TMB, therefore, completed the review of seven safeguard measures applied under Article 6.10 by the United States. In three out of the seven measures, the Members affected by the application of the restraints subsequently requested the establishment of dispute settlement panels. The Dispute Settlement Body established the panels pursuant to these requests. In two cases the reports of the panels and the related reports of the Appellate Body were adopted by the Dispute Settlement Body, while in the third case the

importing Member decided to remove the restraint, and the complainant requested the termination of the panel proceedings. As to the restraints agreed between the United States and the Members concerned, the United States rescinded three restraints before their review scheduled by the TMB, thus, the TMB reviewed nine agreements of restraints notified pursuant to Article 6.9.

86. Brazil made seven requests for consultation under Article 6.7 in June 1997, with respect to imports of six product categories (two requests on imports from Hong Kong, five on imports from Korea), at the same time introducing provisional safeguard measures pursuant to Article 6.11. Brazil and Korea reached an agreement on the measures introduced by Brazil. The agreement related to all five product categories in question and was reviewed by the TMB. The TMB also completed its review of the two remaining unilateral measures introduced by Brazil on imports from Hong Kong.

87. Measures applied by Ecuador with reference, *inter alia*, to the provisions of Article 6 against imports from Korea and Hong Kong were referred by Korea to the TMB, which reviewed the relevant notification.

88. The following sections provide an overview of all the measures applied pursuant to, or with reference to the provisions of Article 6 as well as, if applicable, on their respective follow-up under other provisions of the ATC and under the provisions of the DSU.

B. **THE APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM BY THE UNITED STATES**

1. **Imports of Cotton and Man-made Fibre Underwear (US Category 352/652)**

89. At the end of March 1995, the United States requested consultations, pursuant to Article 6.7, with Colombia, Costa Rica, Dominican Republic, El Salvador, Honduras, Thailand and Turkey. As a result of the consultations held between the United States and the respective Members concerned, an understanding was reached with Colombia, the Dominican Republic and El Salvador regarding the introduction of agreed restraints for a three-year period. Since the consultations held, respectively, with Costa Rica, Honduras, Thailand and Turkey did not produce an agreement within the deadline envisaged in Article 6.10, the United States decided to introduce restraints on imports from these Members and referred the matter to the TMB.

90. The TMB reviewed the safeguard measures applied by the United States pursuant to Article 6.10 on imports of cotton and man-made fibre underwear from Costa Rica, Honduras, Thailand and Turkey. Thailand had also made a notification of the same action under Articles 8.5 and 8.6.<sup>16</sup> During this review, the TMB was informed that the United States and Turkey had arrived at a mutually agreed solution of the issue which would be notified under Article 6.9. In addition, while starting the examination of the request submitted by Thailand in its notification, the TMB was informed that the United States had decided to rescind this safeguard measure against Thailand (G/TMB/R/2).

91. During its review under Articles 6.2 and 6.3 of the safeguard action taken by the United States against imports of category 352/652 from Costa Rica and Honduras, the TMB found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB could not, however, reach consensus on the existence of actual threat of serious damage. The TMB recommended that further consultations be held between the United States and the parties

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<sup>16</sup>See paragraphs 101 and 102 below.

concerned, with a view to arriving at a mutual understanding, bearing in mind the above, and with due consideration to the particular features of this case, as well as equity considerations. The TMB also recommended that these consultations should be held consistent with the ATC, in particular with Articles 6 and 4, and be concluded within 30 days, and that the parties should report to the TMB on the outcome of such consultations no later than at the end of that period. The TMB equally noted that, with respect to the introduction of a safeguard measure, the ATC did not provide any indication with respect to the effective date of implementation of that measure.

92. In reaching its recommendation, the TMB had examined all the information provided by the parties, including the role played by outward processing trade. On that basis, and keeping also in mind the particular nature of this trade flow, the TMB was of the view that a number of important indicators, *inter alia*, the drop in the US' domestic production of cotton and man-made fibre underwear, the parallel increase in imports of these products, and the status of this industry, were not such as to warrant a claim of serious damage being caused to the US' industry by imports. However, the TMB could not agree, on the basis of all the information provided, whether or not there existed a threat of serious damage caused to the US' industry by imports of products of category 352/652 (G/TMB/R/2).

93. Following the TMB's recommendation, the TMB was informed by the United States and Honduras that they had held consultations without reaching a common position, but, subsequently was informed under Article 6.9 that the two parties had arrived at a mutually agreeable resolution of this issue (G/TMB/R/3) (see also paragraph 99).

(a) Costa Rica

94. Following the same TMB recommendation, the TMB received reports by both the United States and Costa Rica explaining that it had not been possible to reach a mutually agreeable resolution of the issue. In view of Costa Rica's request, pursuant to Article 8.7, to participate in the TMB's examination of these reports, the Body decided to invite the participation of both delegations. The TMB took note of the reports and of the fact that the two parties did not reach a mutual understanding during the consultations. The TMB's discussions confirmed the Body's previous findings in this matter. There being no further requests by the parties involved, the TMB considered its review of the matter completed (G/TMB/R/3 and 5).

95. In December 1995, Costa Rica requested consultations with the United States under Article 4 and the other relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII of GATT 1994 and the corresponding provisions of the ATC (WT/DS24/1). Consultations were held, but no mutually satisfactory solution was reached. In February 1996, Costa Rica requested the establishment of a panel (WT/DS24/2), which the Dispute Settlement Body (DSB) established (WT/DSB/M/12). The Panel issued its report in November 1996 (WT/DS24/R), and Costa Rica appealed certain legal interpretations developed by the Panel (WT/DS24/5). The Appellate Body circulated its report in February 1997 (WT/DS24/AB/R).

96. The Panel concluded that the United States violated its obligations under Articles 6.2 and 6.4 of the ATC by imposing a restriction on Costa Rican exports without having demonstrated that serious damage or actual threat thereof was caused by such imports to the US' domestic industry and under Article 6.6(d) of the ATC by not granting more favourable treatment to re-imports from Costa Rica. The Panel also concluded that the United States violated its obligations under Article 2.4 by imposing a restriction in a manner inconsistent with its obligations under Article 6 of the ATC. With respect to the permissible effective date of the application of the

safeguard measures (the only aspect of the Panel's conclusions appealed by Costa Rica) the Appellate Body concluded that giving retroactive effect to a safeguard restraint measure was no longer permissible under the regime of Article 6 of the ATC and was in fact prohibited under Article 6.10.

97. The Panel recommended that the DSB request the United States to bring the measure challenged by Costa Rica into compliance with the US' obligations under the ATC. The Panel stated that such compliance could best be achieved, and further nullification and impairment of benefits accruing to Costa Rica under the ATC best avoided, by a "prompt removal of the measure inconsistent with the obligations of the United States". The Panel, therefore, suggested that the United States bring the measure challenged by Costa Rica into compliance with the US' obligations by "immediately withdrawing the restriction imposed by the measure".

98. At its meeting of 25 February 1997, the DSB adopted the Appellate Body report and the report of the Panel as modified by the Appellate Body report. At a subsequent meeting of the Dispute Settlement Body, in April 1997, the representative of the United States confirmed that the measure at issue had expired without extension on 28 March 1997 and thus the United States had met with its obligations under the WTO Agreement with respect to this matter. However, in view of a letter of 26 March 1997 from the US Government to its customs authorities requesting the monitoring of imports from Costa Rica of products falling within the textile category which had been the subject of the Panel report, Costa Rica reserved the right to request the inclusion of this item on a future agenda of the DSB if the restrictions referred to by the United States in the letter to its customs authorities were to be applied. The United States stated that this letter did not represent, nor should it be interpreted as an extension of the measure that had been examined by the Panel and the Appellate Body.

(b) Honduras

99. In reviewing the restraint measure agreed between the United States and Honduras the TMB recalled that at a previous meeting, when reviewing the action taken by the United States against imports of category 352/652 from Costa Rica and Honduras, it had found that serious damage as envisaged in Articles 6.2 and 6.3, had not been demonstrated. The TMB had not, however, reached consensus on the existence of actual threat of serious damage. The TMB noted that the total level of the agreed restraint, as well as that portion of the restraint which was available unconditionally to Honduras (i.e. the specific limit) were both substantially above the roll-back level. The TMB also observed that no growth rate was provided for with respect to the GAL.<sup>17</sup> However, according to indications given by the US Government, the GAL could be increased on request. Therefore, it was the TMB's understanding that, at the request of Honduras, the GAL would be increased by no less than 6 per cent annually (G/TMB/R/8).

100. In December 1995, the TMB received a communication from Honduras relating to the implementation by the United States of this agreed restraint measure. In this communication, Honduras expressed concern that the agreement was not implemented consistently with its terms by the United States, notably with respect to the level of access to the US market as of 1 January 1996, and that this was, therefore, threatening to seriously disrupt trade from Honduras. Honduras requested that the TMB review the implementation of the limits bilaterally agreed. The TMB was informed that it was the US Government's intention to implement the agreement in full

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<sup>17</sup>Guaranteed Access Levels (GALs) are quantities of products of a category that a country can export to the United States without being subject to quantitative limitation, provided the actual product shipped qualifies for such treatment, *inter alia*, by being made of "US components".

and to be in contact with Honduras with a view to resolving this question. The TMB took note of this, informed Honduras of the US' communication, and decided that, should problems remain, it would revert to this question at its subsequent meeting. Both parties were informed of this decision (G/TMB/R/8). The TMB was informed subsequently by both parties that the problems had been solved.

(c) Thailand

101. In the context of the safeguard action introduced by the United States on imports of cotton and man-made fibre underwear, the TMB received a notification from Thailand under Articles 8.5 and 8.6 of the ATC. According to this notification, since Article 6.4 of the ATC provided that no safeguard measure shall be applied to the exports of any Member whose exports of the particular products were already under restraint under the ATC, the United States had no right to introduce a safeguard measure on imports of category 352/652 from Thailand, as that category was already subject to a group limit. The representative of Thailand confirmed that, irrespective of the US' decision to rescind the safeguard measure against imports from Thailand, Thailand wanted the TMB to review the question of principle raised. After having heard the presentation of the parties, the TMB decided to defer the consideration of this issue to a subsequent meeting (G/TMB/R/2).

102. While the TMB did not resume the consideration of this issue with the participation of the two Members concerned, it recalled in its reply to Thailand that when it had reviewed the safeguard measure introduced by the United States on imports of woven wool shirts and blouses (US category 440) from Hong Kong (G/TMB/R/4, see also paragraph 133 below), it had noted that Hong Kong's exports of products of category 440 into the United States were already under restraint under a group limit notified by the United States and had found that, according to Article 6.4, the application of a safeguard measure under Article 6 to Hong Kong's exports of products of category 440 into the United States was, therefore, not justified.

(d) Turkey

103. In reviewing the restraint measure agreed between the United States and Turkey, the TMB recalled that at a previous meeting, when reviewing the action taken by the United States against imports of category 352/652 from Costa Rica and Honduras under Articles 6.2 and 6.3, an action taken at the same time as that on imports of the same product from Turkey, it had found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB had not, however, reached consensus on the existence of actual threat of serious damage. The TMB noted that the specific limit agreed was substantially above the roll-back level (G/TMB/R/8).

(e) Colombia

104. In reviewing the restraint measure agreed between the United States and Colombia, the TMB recalled that at a previous meeting, when reviewing the action taken by the United States against imports of category 352/652 from Costa Rica and Honduras under Articles 6.2 and 6.3, an action taken at the same time as that on imports of the same product from Colombia, it had found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB had not, however, reached consensus on the existence of actual threat of serious damage. The TMB noted that the total level of the agreed restraint, as well as that portion of the restraint which was available unconditionally to Colombia (i.e. the specific limit) were both substantially above the roll-back level (G/TMB/R/8).

(f) Dominican Republic

105. In reviewing the restraint measure agreed between the United States and the Dominican Republic, the TMB recalled that at a previous meeting, when reviewing the action taken by the United States against imports of category 352/652 from Costa Rica and Honduras under Articles 6.2 and 6.3, an action taken at the same time as that on imports of the same product from the Dominican Republic, it had found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB had not, however, reached consensus on the existence of actual threat of serious damage. The TMB noted that, whilst the total level of the agreed restraint was substantially above the roll-back level, that portion of the restraint which was available unconditionally to the Dominican Republic (i.e. the specific limit) was lower than that roll-back level. The TMB also observed that no growth rate was provided for with respect to the guaranteed access level (GAL). However, according to indications given by the US Government, the GAL can be increased on request. Therefore, it was the TMB's understanding that, at the request of the Dominican Republic, the GAL would be increased by no less than 6 per cent annually (G/TMB/R/7).

(g) El Salvador

106. In reviewing the restraint measure agreed between the United States and El Salvador, the TMB recalled that at a previous meeting, when reviewing the action taken by the United States against imports of category 352/652 from Costa Rica and Honduras under Articles 6.2 and 6.3, an action taken at the same time as that on imports of the same product from El Salvador, it had found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB had not, however, reached consensus on the existence of actual threat of serious damage. The TMB noted that the total level of the agreed restraint, as well as that portion of the restraint which was available unconditionally to El Salvador (i.e. the specific limit) were both substantially above the roll-back level. The TMB also observed that no growth rate was provided for with respect to the GAL. However, according to indications given by the US Government, the GAL can be increased on request. Therefore, it was the TMB's understanding that, at the request of El Salvador, the GAL would be increased by no less than 6 per cent annually (G/TMB/R/8).

2. Imports of Cotton and Man-made Fibre Pyjamas and Other Nightwear  
(US Category 351/651)

107. In March 1995, the United States requested consultations, pursuant to Article 6.7, with Honduras, El Salvador and Jamaica. During the bilateral consultations, the United States reached an agreement with El Salvador and Jamaica, respectively, on the application of a restraint for a three-year period. The consultations held between the United States and Honduras did not produce an agreement within the deadline envisaged in Article 6.10. The United States decided to introduce a restraint on imports from Honduras and referred the matter to the TMB.

(a) Honduras

108. The TMB reviewed under Articles 6.2 and 6.3 the safeguard measure introduced by the United States pursuant to Article 6.10 on imports of cotton and man-made fibre pyjamas and other nightwear from Honduras. The TMB, having examined all the information provided by the parties, found that serious damage, or actual threat thereof, had not been demonstrated and recommended that the United States rescind the measure (G/TMB/R/2). Subsequently, the TMB was informed that the United States had decided to rescind the measure. The TMB took note of this decision (G/TMB/R/3).

(b) El Salvador, Jamaica

109. Subsequent to the TMB's review of the restraint introduced against imports from Honduras (see paragraph 108 above), and before the Body could start to review the restraints agreed with El Salvador and Jamaica, the United States informed the TMB that it had rescinded these agreed restraints.

(c) Costa Rica

110. In June 1995, the United States requested consultations with Costa Rica pursuant to Article 6.7. As the consultations did not produce an agreement between the parties, the United States introduced a unilateral restraint against imports of category 351/651 products from Costa Rica and informed the TMB accordingly. Subsequently, before the TMB could start the review of this restraint, the United States decided to rescind the measure and informed the TMB of this decision.

3. Imports of Men's and Boys' Wool Coats and Other than Suit-type (US Category 434)

(a) India

111. In April 1995, the United States requested consultations with India pursuant to Article 6.7. As the consultations did not produce an agreement between the two parties, the United States introduced a restraint against imports from India under Article 6.10 and referred the matter to the TMB.

112. The TMB considered the safeguard measure taken by the United States on imports of US category 434 from India. The TMB, having examined all of the information provided by both parties in the light of the conditions established under Articles 6.2 and 6.3, found that serious damage, or actual threat thereof, had not been demonstrated, and recommended that the United States rescind the measure. Subsequently, the TMB was informed and took note that the United States had decided to rescind this safeguard measure (G/TMB/R/3 and 5).

(b) Brazil

113. In April 1995, the United States requested consultations pursuant to Article 6.7 with Brazil. Subsequently, the TMB was informed that the United States had decided not to take any action against imports of category 434 products from Brazil.

4. Imports of Women's and Girls' Wool Coats (US Category 435)

114. In April 1995, the United States requested consultations pursuant to Article 6.7 with India and Honduras. As the bilateral consultations did not produce any agreement, the United States decided to introduce unilateral restraints against imports of category 435 products from India and Honduras and accordingly referred the matter to the TMB.

(a) India

115. The TMB considered, under Articles 6.2 and 6.3, the safeguard measure taken by the United States under Article 6.10 on imports of US category 435 from India. The TMB found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB could not, however, reach consensus on the existence of actual threat of serious damage. The TMB added that, when reviewing the implications of the discussions in the TMB and the Body's finding

in this matter, the parties should keep in mind the fact that the ATC was silent as to whether the import restraint could continue to be maintained (G/TMB/R/3).

116. Subsequently, the TMB received a communication from India under Article 8.6. In this communication, India noted that the TMB had arrived at a consensus on the absence of serious damage, but could not reach a consensus on the existence of actual threat thereof. Thus, the TMB had not been able to make appropriate recommendations, though Article 6.10 mandated it to do so in situations where there had been no agreement between the Member proposing to take a safeguard action and the Member which would be affected by such action. It was the understanding of the Government of India that, in the absence of a clear recommendation of the TMB upholding the validity of the restraint action by the United States, it was incumbent upon the United States to withdraw the restraint. India, therefore, requested the TMB to review the action by the United States in continuing its restraint on imports of category 435 from India, as such action was detrimental to India's interests. The TMB heard the presentation by India, and considered the elements put forward. The Body could not make any recommendation in addition to the conclusions it had reached at a previous meeting (G/TMB/R/3), nor could the TMB reach a consensus on whether or not the restraint on category 435 could continue to be maintained in light of the absence of consensus on the existence of actual threat of serious damage. The TMB, therefore, considered its review of the matter under the relevant provisions of the ATC completed (G/TMB/R/6).

117. In March 1996, India requested the establishment of a panel pursuant to Article XXIII:2 of GATT 1994, Article 6 of the DSU and Article 8.10 and other relevant provisions of the ATC (WT/DS32/1). The Dispute Settlement Body decided to establish a panel. In a subsequent communication dated 25 April 1996, India stated that it had been informed by the US Authorities that the United States had removed the restraint on category 435 products. In the light of this, the Government of India decided to request the termination of any further action in pursuance of the decision taken by the DSB to establish a panel to examine matters arising from the US' action with regard to category 435. This request was without prejudice to India's stand that the restraint introduced by the United States on imports of category 435 was inconsistent with the ATC and also without prejudice to India's stand on various factual and legal issues outlined by India in its request for the establishment of a panel (WT/DS32/2).

(b) Honduras

118. The TMB started its review of the safeguard measure introduced by the United States pursuant to Article 6.10 on imports of US category 435 from Honduras, and after the presentation of their arguments, was informed by the parties that they had decided to resume bilateral consultations, and asked for suspension of the consideration of this issue by the TMB. The Body was informed subsequently that the United States and Honduras had arrived at a mutually agreeable resolution of the issue which would be notified under Article 6.9 (G/TMB/R/3).

119. In reviewing the restraint measure agreed between the United States and Honduras, the TMB recalled that at a previous meeting, when reviewing the action taken by the United States against imports of category 435 from India under Articles 6.2 and 6.3, an action taken at the same time as that on imports of the same product from Honduras, it had found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB had not, however, reached consensus on the existence of actual threat of serious damage. The TMB noted that the total level of the agreed restraint, as well as that portion of the restraint which was available unconditionally to Honduras (i.e. the specific limit) were both above the roll-back level. The TMB also noted that

the agreed growth rate of 2 per cent was justified in accordance with Article 6.13.<sup>18</sup> The TMB also observed that no growth rate was provided for with respect to the GAL. However, according to indications given by the US Government, the GAL can be increased on request. Therefore, it was the TMB's understanding that, at the request of Honduras, the GAL would be increased by no less than 2 per cent annually (G/TMB/R/8).

120. In December 1995, the TMB also received a communication from Honduras relating to the implementation by the United States of this agreed restraint measure. In this communication, Honduras expressed concern that the agreement was not implemented consistently with its terms by the United States, notably with respect to the level of access to the US' market as of 1 January 1996, and that this was, therefore, threatening to seriously disrupt trade from Honduras. Honduras requested that the TMB review the implementation of the limits bilaterally agreed. The TMB was informed that it was the US Government's intention to implement the agreement in full and to be in contact with Honduras with a view to resolving this question. The TMB took note of this, informed Honduras of the US' communication, and decided that, should problems remain, it would revert to this question at its subsequent meeting. Both parties were informed of this decision (G/TMB/R/8). The TMB was informed subsequently by both parties that the problems had been solved.

121. Subsequently, Honduras, in a communication of March 1997, under Articles 8.6 and 8.7, requested the TMB to "consider and make a recommendation at its next meeting concerning the appropriateness of the United States maintaining this restraint". The United States sent, in April 1997, a communication to the TMB in which it explained that in the view of the United States the matter referred to by Honduras was the subject of a signed bilateral agreement between the two Governments and had already been reviewed by the TMB in accordance with Article 6.9 of the ATC; that according to the US Government, Article 8.7 did not permit the reopening of agreements between Members once they had been reviewed by the TMB for conformity with the Agreement; and that the United States therefore requested that "the TMB not agree to Honduras' request for a second review of this issue based on events that have taken place since the TMB's first review".

122. At its twenty-ninth meeting, during its review of the communication by Honduras, and in the presence of a representative of Honduras, the TMB observed, *inter alia*, that when, in December 1995, it had reviewed the agreement concluded between Honduras and the United States on imports of women's and girls' wool coats (category 435) from Honduras, it had not reached a determination whether that agreement was justified in accordance with the provisions of Article 6 of the ATC.

123. The TMB further observed that, following the request by India that a panel be established to examine matters arising out of the US' action with regard to imports of products of category 435 from India, the United States had removed the restraint on such imports, since the United States had become convinced that the restraint on category 435 was no longer necessary. The TMB understood that, subsequently, Honduras had raised with the United States the question of the appropriateness for the United States to maintain the restriction on imports of products of category 435 from Honduras, but had received no positive reply from the United States. The TMB also noted the arguments of Honduras that the maintenance of this restraint on imports from Honduras was detrimental to Honduras' interests under the ATC.

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<sup>18</sup>See paragraph 171.

124. In light of the elements mentioned above, the TMB expected that the United States would reassess the situation to see whether in all the circumstances it was still appropriate for the United States to maintain the restraint on category 435 against Honduras. The TMB further expected that the United States would keep it informed of the outcome of its reassessment.

125. At its thirty-second meeting, the TMB reverted to the matter, on the basis of a communication received from the United States according to which it had reviewed the restraint on Honduran exports of products of US category 435 and, as a result of this review, decided to rescind this restraint no later than 31 October 1997. The United States would communicate the exact timing of this rescission to the TMB in early July 1997. The TMB took note of this communication, 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 latest by 10 July 1997. The TMB decided to revert to this issue during the latter part of its thirty-fourth meeting.

126. At that meeting the TMB considered communications received from Honduras which expressed disappointment that the United States had not yet complied with the TMB recommendation, and requested that, if the United States reply did not comply with the substance of the TMB recommendation, the TMB "continue with the process of fully reviewing the U.S. measure on Category 435 ... promptly", i.e. at the meeting scheduled for 21 to 25 July 1997. The TMB also considered a communication from the United States according to which the review by the United States to determine whether it was possible to rescind that restraint before 31 October 1997 depended on the availability of new production data, which were not yet available but would be available before the next TMB meeting. Therefore, the United States assured the TMB that it would be in a position to inform it of its decision at that time. The TMB took note of these communications, and expressed concern that, contrary to its expectation, the United States had not yet communicated the date on which it would rescind the measure on imports of products of US category 435 from Honduras to the TMB. The TMB decided to revert to this issue, referred to in paragraph 26 of G/TMB/R/31, during its thirty-fifth meeting scheduled for 21 to 25 July 1997, to which both Members were invited.

127. At its thirty-fifth meeting the TMB, in the presence of a representative of Honduras, took note of a further communication received from the United States according to which the United States, having received and reviewed the data related to category 435 along with all other information related to this case, had decided to rescind the restraint on imports of products of US category 435 from Honduras, the subject of an Article 6 agreement with Honduras, on 30 September 1997.

##### 5. Imports of Woven Wool Shirts and Blouses (US Category 440)

128. In April 1995, the United States requested consultations pursuant to Article 6.7 respectively with India and Hong Kong. Bilateral consultations did not produce agreement between the Members concerned. The United States decided to introduce restraints under Article 6.10 on imports of category 440 products from India and Hong Kong and at the same time the measures were referred to the TMB.

###### (a) India

129. The TMB considered, under Articles 6.2 and 6.3, the safeguard measure taken by the United States on imports of category 440 products from India. The TMB found that the actual threat of serious damage had been demonstrated, and that, pursuant to Article 6.4, this actual

threat could be attributed to the sharp and substantial increase in imports from India (G/TMB/R/3).

130. Subsequently, the TMB received a communication from India under Article 8.10, following the review by the TMB of the safeguard action taken by the United States. In this communication, India conveyed its inability to conform with the recommendation the TMB had made, which allowed for the continuance of the restraint levels imposed by the United States. The TMB heard the presentation and considered the elements put forward by India. The Body could not make any recommendation in addition to the conclusions it had reached at a previous meeting. The TMB, therefore, considered its review of the matter completed (G/TMB/R/6).

131. In a communication of March 1996, India requested the establishment of a panel pursuant to Article XXIII:2 of GATT 1994, Article 6 of the DSU and Article 8.10 and other relevant provisions of the ATC (WT/DS33/1). The Dispute Settlement Body established the Panel pursuant to the request of India. In December 1996, the United States decided to withdraw the restraint "due to a steady decline in imports of woven wool shirts and blouses from India and the adjustment of the industry". The Panel issued its report in January 1997 (WT/DS32/R/12). The Panel concluded that the US restraint applied on imports of category 440 products from India and its extensions violated the provisions of Articles 2 and 6 of the ATC and the said measure nullified and impaired the benefits of India under the WTO Agreement, in particular the ATC. India appealed certain aspects of the Panel's findings. The Appellate Body's report, upholding the findings and conclusions of the Panel, was circulated in April 1997 (WT/DS33/AB/R).

132. At its meeting in May 1997, the Dispute Settlement Body adopted the report of the Panel and that of the Appellate Body.

(b) Hong Kong

133. The TMB reviewed the safeguard measure introduced by the United States pursuant to Article 6.10 on imports of category 440 products from Hong Kong. The TMB, having considered the arguments put forward by the parties, noted that Hong Kong's exports of products of category 440 into the United States were already under restraint under a group limit notified by the United States in accordance with Article 2.1 of the ATC. It found that, according to Article 6.4, the application of a safeguard measure under this Article to Hong Kong's exports of products of category 440 into the United States was, therefore, not justified, and recommended that the United States rescind the measure. Subsequently, the TMB was informed and took note that the United States had decided to rescind this safeguard measure (G/TMB/R/4 and 6).

6. Imports of Man-made Fibre Luggage (US Category 670-L)

134. In April 1995, the United States requested consultations pursuant to Article 6.7 with the Philippines, Sri Lanka and Thailand. Consultations with Sri Lanka produced an agreement on a restraint, while those conducted with the Philippines and Thailand did not. The United States introduced restraints on imports from these two Members, but decided afterwards to withdraw these restrictions before the TMB could review them. Subsequently, the United States also rescinded the restraint agreed with Sri Lanka.

7. Imports of Artificial Staple Yarn (US Category 603)

135. In April 1995, the United States requested consultations pursuant to Article 6.7 with Thailand. As the consultations did not produce an agreement, the United States introduced a unilateral restraint pursuant to Article 6.10, but subsequently, withdrew the restraint before the TMB could review it.

8. Imports of Cotton and Man-made Fibre Shirts (US Category 342/642)

136. In May 1995 and March 1996, the United States requested consultations pursuant to Article 6.7 respectively with Guatemala and El Salvador. In both cases the consultations resulted in an agreement on restraints.

(a) Guatemala

137. The TMB reviewed the restraint measure agreed between the United States and Guatemala on imports of category 342/642 products from Guatemala, communicated to the TMB pursuant to Article 6.9. The TMB examined the information made available by the United States to Guatemala during the bilateral consultations, in particular, and also other relevant information provided by the United States at the TMB's request. While it observed that some data might point to diverging directions, the TMB concluded that this agreement in overall terms was justified in accordance with the provisions of Article 6 of the ATC. The TMB noted that the total level of the agreed restraint, as well as that portion of the restraint that was available unconditionally to Guatemala (i.e. the specific limit), were substantially above the roll-back level. It observed that no growth rate was provided for with respect to the GAL. However, according to indications given by the US Government, the GAL could be increased on request. Therefore, it was the TMB's understanding that, at the request of Guatemala, the GAL would be increased by no less than 6 per cent annually (G/TMB/R/13).

(b) El Salvador

138. The TMB reviewed the restraint measure agreed between the United States and El Salvador on imports of category 342/642 products from El Salvador, communicated to the TMB pursuant to Article 6.9. 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.

139. The TMB observed that certain economic variables (production, market share, employment, domestic prices) indicated that the US' industry producing cotton and man-made fibre shirts was experiencing problems as a result of increased imports. On the other hand, some other economic variables 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 Article 6.2 were observed in the US' market for cotton and man-made fibre shirts.

140. 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 unrestrained, 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 Article 6.2 could be attributed to increased imports from El Salvador.

141. 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 roll-back level. It observed that no growth rate was provided for with respect to the GAL. However, keeping also in mind indications given by the US Government that GALs could be increased on request, it was the TMB's understanding and recommendation that the GAL would be increased by no less than 6 per cent annually.

142. 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 (G/TMB/R/19).

143. At its twenty-third meeting, the TMB considered a communication received from El Salvador, related to the TMB's examination, mentioned above, of the notifications by El Salvador and the United States of a restraint measure agreed between the two Members, pursuant to Article 6.9. In this communication, dated 22 November 1996, El Salvador, *inter alia*, urged the TMB to invite it 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 on 29 and 30 October 1996, 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.

9. Imports of Women's and Girls' Wool Suits (US Category 444)

144. In May 1995, the United States requested consultations with Colombia and the Philippines pursuant to Article 6.7. Consultations with Colombia led to a restraint agreed by the two parties, whereas the United States introduced, after consultations, a unilateral restraint against imports from the Philippines. Subsequently, the United States withdrew this measure against the Philippines before the TMB could review it.

145. The TMB reviewed the restraint measure agreed between the United States and Colombia on imports of category 444 products from Colombia, communicated to the TMB pursuant to Article 6.9. The TMB examined the information made available by the United States to Colombia during the bilateral consultations, as well as other relevant information provided by the United States at the TMB's request. While it observed that some data, notably the pace of increased imports from Colombia, might lead to different findings, the TMB concluded that this agreement in overall terms was justifiable in accordance with the provisions of Article 6 of the ATC. As such, the agreement was considered justified. The TMB noted, however, that, whilst the total level of the agreed restraint was substantially above the roll-back level, that portion of the restraint available unconditionally to Colombia (i.e. the specific limit) was lower than the roll-back level (G/TMB/R/11).

10. Yarn for Sale, 85 Per Cent or More by Weight Cotton Combed Spun (US Category 301 Part)

146. In April 1997, the United States requested consultations with Pakistan. Subsequently the United States informed the TMB that, after consultations with Pakistan, it had decided not to impose a restraint on imports of category 301 from Pakistan.

C. THE APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM BY BRAZIL

147. In June 1996, Brazil requested consultations with Hong Kong and Korea pursuant to Articles 6.7 and 6.11, and at the same time introduced seven provisional safeguard measures (two on imports from Hong Kong, five on imports from Korea). The parties subsequently communicated to the TMB that consultations had not produced agreement within the deadline envisaged in Article 6.11.

148. In September 1996, the TMB was informed by Brazil and Korea that they had decided to resume consultations with respect to the safeguard measures introduced by Brazil pursuant to Article 6.11 on imports of the following Brazilian product categories from Korea: category 611 (woven fabrics containing 85 per cent or more by weight of artificial staple); category 618 (woven artificial filament fabric); category 619 (polyester filament fabric); category 620 (other synthetic filament fabric); and category 627 (sheeting of staple filament fibre combination). Both parties, consequently, requested the TMB to defer its consideration of these measures (G/TMB/R/16). Subsequently, Brazil and Korea informed the TMB that they had reached an agreement on restraints, the details of which were notified to the TMB.

1. Imports of Woven Artificial Filament Fabric (Brazilian Category 618)

149. The TMB considered the safeguard measure introduced by Brazil, pursuant to Article 6.11, on imports of products of Brazilian category 618 from Hong Kong at its meetings in September and November 1996. On the basis of a detailed examination the TMB found that the Brazilian industry was showing somewhat contradictory symptoms and the evolution of a number of economic indicators and their possible interrelation 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 restructuring 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.

150. 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 this regard, the TMB concluded that the serious damage experienced by the Brazilian industry could be attributed in part to imports from Hong Kong in accordance with Article 6.4. Furthermore, the TMB noted that Brazil had invoked

the provisions of Article 6.11 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 Article 6.11 were invoked, the expectation was that the elements envisaged in Articles 6.2, 6.3 and 6.4 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. In conclusion, the TMB 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 considered that a shorter period of time than the maximum time-frame envisaged in Article 6.12(a) 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 the latest by 31 December 1997 (G/TMB/R/20).

151. At its twenty-third meeting, the TMB took note of a communication received from Brazil that, in accordance with Article 8.9 of the ATC, the Brazilian Government would endeavour to accept in full the recommendation of the TMB concerning transitional safeguards applied to imports of category 618 from Hong Kong. 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).

152. Subsequently, the TMB received a notification from Hong Kong pursuant to Article 8.10. In this communication, Hong Kong conveyed its inability to conform with the recommendation made by the TMB regarding the transitional safeguard measure applied by Brazil with respect to products of category 618. Hong Kong, therefore, requested the TMB to reconsider the matter in light of the reasons it gave in its communication and to issue revised recommendations.

153. At its twenty-sixth and twenty-seventh meetings, the TMB gave thorough consideration to the reasons and arguments put forward by Hong Kong, as well as of the comments and clarifications provided by Brazil. In summing up the consideration it had given to the reasons presented by Hong Kong, the TMB agreed that in case of recourse to Article 6, it was important to provide as much factual information and data as possible that was specific to the product category itself, as product-specific information and data should have a major impact on the overall assessment whether serious damage, or actual threat thereof could be demonstrated.

154. In this regard and with respect to the particular case before it, it was the understanding of the TMB that Hong Kong did not disagree with it in accepting that it had not been possible for Brazil to provide category-specific information and data with respect to each and every economic variable envisaged in Article 6.3. The TMB held the view that in such a case and in respect of such variables, if factual information and data that related as closely as possible to the product category itself were examined, these information and data had also to be submitted to the Member to which the request for consultations was addressed, as well as to the TMB.

155. In the context of the above the TMB noted that, in the view of Hong Kong, the ATC required that only information and data specific to the "particular industry" could be examined in making a determination of serious damage to the domestic industry. The TMB had declined to pronounce itself on issues which would require the adoption of more general interpretations of the

ATC, but it recalled its observation of the importance of product-specific information and data (see paragraph 153). The TMB noted that it was not a part of Hong Kong's contention to request the Body to conduct a *de novo* examination with a view to establishing whether serious damage in this particular case could be determined exclusively on the basis of the economic variables for which category-specific information had been provided.

156. In conclusion, 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.

157. The TMB recognized, however, that certain formulations of its report on the examination of this matter pursuant to Article 6.11 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.

158. 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.

159. At the meeting of the Dispute Settlement Body on 30 April 1997, Hong Kong made a statement, according to which it was its understanding that the spirit of the TMB's report was that Brazil was expected to rescind the measure earlier than 31 December 1997. Hong Kong had anticipated that Brazil would rescind the measure in good time. The status of the dispute between Brazil and Hong Kong was that Hong Kong's authorities were still awaiting a response from Brazil. Hong Kong might need to revert to this dispute at a future meeting of the DSB. If so, it was hoped that this would be a notification under Article 3.6 of the DSU. In response, Brazil recalled, *inter alia*, that it had informed the TMB that it would endeavour to accept in full the recommendations concerning the transitional safeguards applied to imports of products of categories 618 from Hong Kong, and that it had reserved its rights under Article 6.12 of the ATC in relation to such recommendations. Brazil stated that with regard to products of category 618, taking into consideration the TMB's recommendations, and in light of its rights and obligations under the ATC, it was carefully following developments in the industry producing these products.

2. *Imports of Men's and Boys' Knit Shirts of Material Other Than Cotton and Man-Made Fibre (Brazilian Category 838)*

160. The TMB considered the safeguard measure introduced by Brazil, pursuant to Article 6.11, on imports of products of category 838 from Hong Kong. Having examined the factual data presented to it pursuant to Article 6.7, as well as the relevant information and arguments provided by Brazil and Hong Kong, 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 Article 6.2, and recommended that Brazil rescind the measure. The TMB equally observed that the recourse by Brazil to the provisions of Article 6.11 was not appropriate. The TMB reiterated its view that in cases where these provisions were invoked, the expectation was that the elements envisaged in Articles 6.2, 6.3 and 6.4 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 (G/TMB/R/20).

161. At its twenty-third meeting, 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 category 838 (men's and boys' shirts, knitted or crocheted, of other textile materials) from Hong Kong". At its twenty-fifth meeting the TMB took note of a 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.

3. *Imports of Synthetic Fibre Products (Brazilian Categories 611, 618, 619, 620 and 627)*

162. At its twenty-eighth meeting, the TMB reviewed, pursuant to Article 6.11, the notification by Brazil and Korea of restraint measures agreed between the two Members on imports of artificial and synthetic fibre products of categories 611, 618, 619, 620 and 627 from Korea. The levels agreed corresponded to the level envisaged in Article 6.8 (roll-back level). Annual growth for all categories was set at 6 per cent, and the application of such growth would take place, by anticipation, on 1 January of each of the three calendar years during which the restraints would be in effect. Special shift of 30 per cent from category 620 to category 619 would be allowed, plus a special carry forward of 25 per cent applicable to category 619. Both flexibilities would be granted upon notification by Korea. Swing of 8 per cent was available between all categories. Carry forward and/or carryover of 10 per cent, of which carry forward shall not represent more than 5 per cent, were available, and a special carryover of 10 per cent of the prorated annual quota for 1996 was available in 1997, for all categories.

163. The TMB expressed serious concern that this notification had been received far beyond the 90-day deadline envisaged in Article 6.11 for such notification. It recalled in this regard that the restraints had been introduced provisionally by Brazil as from 1 June 1996. While taking note of the indications given by Brazil and Korea that more time had been necessary to finalize the details of the agreement, the TMB recalled the importance of adhering strictly to the substantive and procedural requirements defined by the ATC, including the deadlines specified therein.

164. Having considered in detail all the relevant factual information (market statements), referred to in Article 6.7, made available by Brazil to Korea during the consultations, and bearing in mind the fact that all the elements of the agreements were in conformity with the relevant paragraphs of Article 6, the TMB concluded that the restraint measure agreed between Brazil and Korea on imports of products of categories 611, 618, 619, 620 and 627 from Korea were justified in accordance with the provisions of Article 6 of the ATC.

165. The TMB noted that, with respect to all the categories subject to agreement with Korea, Brazil had invoked the provisions of Article 6.11 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 that in cases where the provisions of Article 6.11 were invoked, the expectation was that the elements envisaged in Articles 6.2, 6.3 and 6.4 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 (G/TMB/R/27).

D. MEASURES APPLIED BY ECUADOR WITH REFERENCE TO THE SAFEGUARD MECHANISM OF THE ATC

166. At its twenty-third meeting, 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. Korea subsequently requested the TMB that this examination be postponed until February 1997, reflecting the view which had been expressed by Ecuador that more time was necessary for an adequate examination of the case. Both Ecuador and Hong Kong had been informed of this request. However, the TMB was concerned that, contrary to the requirements of Article 6.11, it had not been placed in a position to review this issue despite the fact that the measures had been in place for almost five months. It therefore decided to invite representatives of Ecuador, Korea and Hong Kong to its twenty-fourth meeting, when it intended to consider this matter (G/TMB/R/22).

167. At that meeting, the TMB, heard and considered the presentations and statements made by the Members concerned. In taking note of these statements, and of the information provided by Ecuador, the TMB noted that the action taken was not consistent with the provisions of Article 6 of the ATC, both because of the price-based nature of the measures themselves, and because the procedural and substantive requirements contained in Article 6 of the ATC were not met. The TMB observed that Article 6 provides, *inter alia*, that though a Member can introduce quantitative restrictions "the Member proposing to take safeguard action shall seek consultations with the Member or Members which would be affected by such action", and that, in "highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action ... may be taken provisionally on the condition that the request for consultations and notification to the TMB shall be effected within no more than five working days after taking the action".

168. The TMB registered its concern that: (a) Ecuador had adopted this action on 9 August 1996 invoking Article 6 of the ATC, but had not informed the TMB or the affected Members of this action until 27 November 1996; (b) consultations had not taken place until Korea, having noticed that the measures were being applied, raised the issue in the Council for Trade in Goods and the TMB; (c) Ecuador did not inform the TMB that, in its view, the measures did not constitute measures taken pursuant to Article 6 of the ATC until its twenty-fourth meeting.

169. The TMB, while bearing in mind the statement by Ecuador that these measures had not been taken under the provisions of the ATC, noted that such measures had been in force for some five months and would remain applicable until 9 February 1997 with possible effects on trade between the Members concerned, and expected that Ecuador would take the necessary steps to disinvite Article 6 of the ATC with respect to these measures, and comply with the legal and procedural requirements under the WTO (G/TMB/R/23).

170. Subsequently, Ecuador submitted a communication to the TMB informing it that the measures as detailed above had expired on 9 February 1997.

E. IMPLEMENTATION OF ARTICLE 6.13

171. The Chairman informed the TMB during its first meeting that he had received from the Chairman of the Trade Negotiating Committee at official level a Note for the Record regarding Article 6.13 of the Agreement on Textiles and Clothing, according to which "the phrase 'unless otherwise justified to the TMB', referred to in Article 6.13, is intended to be limited to imports of wool products into the United States, subject to the condition that the growth rate applied under this provision shall in no case be less than 2 per cent. For this purpose, wool textiles and clothing products are defined as those covered by the 400 series of the United States' textile category system". The TMB transmitted this note to WTO Members for their information.

F. COMMENTS OF WTO MEMBERS

172. In a communication sent in response to the request for information by the TMB (G/TMB/11), one Member stated with respect to Article 6 that "it is a fact to be noted by the TMB that a Member, which is the largest single importer of textile products, heralded the WTO era by initiating more than two dozen additional restraints on their imports. Though technically the actions for such restraints were taken under the provisions of the ATC, the fact that so many restraints were initiated during the first few months of the opening year of the ATC, indicates lack of sincerity on the part of this largest importing country for an effective phasing out of restraints. It is also noteworthy that many of these restraints did not stand the scrutiny of the TMB and the only cases which ultimately reached the DSB Panels were decided against this importing Member". That Member further stated that "it is a welcome trend that restraints have begun to be examined by DSB panels. This will ensure that the WTO rules are properly followed and implemented in the textile sector and will also help the international trade in the textile products to graduate into the WTO regime, by the time the phase out period is over. Another issue is the need for a mechanism to ensure proper compliance of the recommendations of TMB as well as the Dispute Panels. Since the new restraints under Article 6 of the ATC are permissible for a period of three years, it may be possible for the importing countries to achieve their objective just by delaying the implementation of the recommendations of the TMB or the Dispute Panel to cover such period".

G. COMMENTS AND OBSERVATIONS OF THE TMB

173. While 55 Members notified their wish to retain the right to use the provisions of Article 6 (see Chapter II), and thus altogether 59 Members (counting the European Community as one) could have claimed the use of the transitional safeguard mechanism, it is important to note that during the period 1 January 1995 to 24 July 1997 two of them invoked the provisions of Article 6, involving 33 cases in total. The United States sought consultations with 14 Members in

26 cases, while Brazil took provisional actions against imports from two Members in seven cases. A breakdown of such invocations by quarters shows the following pattern:

Year	Quarter	Requests
1995	First quarter	10 requests (United States)
	Second quarter	14 requests (United States)
	Third quarter	none
	Fourth quarter	none
1996	First quarter	1 request (United States)
	Second quarter	7 requests (Brazil)
	Third quarter	none
	Fourth quarter	none
1997	First quarter	none
	Second quarter	1 request (United States)
<b>TOTAL</b>		33 requests

174. Of the 26 actions initiated by the United States, nine transitional safeguard measures remained in force as of the end of July 1997, all in the form of agreed restraints, while in 17 cases the measures had already been rescinded or the actions dropped (one of the nine measures would be rescinded in advance of its scheduled termination date - see paragraph 127 above). As it had noted in its report adopted in the context of the preparation of the Singapore Ministerial Conference, the TMB is aware of the implications for trade of requests for consultations made with a view to introducing safeguard measures, in particular, when transitional measures were applied and subsequently rescinded.

175. As indicated in paragraph 173, the bulk of requests for consultations (altogether 24) was concentrated in the first half of 1995, and thus coincided with the entering into force of the ATC and other Uruguay Round Agreements. This concentration in terms of timing and, in particular, the great number of cases:

- caused serious concerns to certain Members, as expressed in the TMB by those Members directly affected, and also by the same Members, and a number of others, in the Council for Trade in Goods; and
- placed the TMB in a situation which made it difficult for it to cope with these cases and all other types of notifications it had to review.

176. The examination of the requests for consultations and of the resulting measures made by the TMB and, in some cases, subsequently, DSB panels, led to the conclusion that in most cases the United States did not comply with important obligations arising from Article 6.

177. Out of the seven safeguard actions taken by Brazil, one was rescinded, as recommended by the TMB. One measure adopted pursuant to Article 6.11 remained in force but the TMB recommended that Brazil eliminate that restraint earlier (i.e. at the latest by the end of December 1997) than the time-frame foreseen in the relevant provisions of the ATC; whereas it had been agreed with the Member concerned that the five others remain in force for a three-year period. The TMB found these five restraints to be justified in accordance with the provisions of Article 6. The fact that a Member, which had chosen to retain the right to use Article 6, had decided to apply the provisions of Article 6 may be an indication of the ongoing changes in trade patterns in this area.

178. As Brazil had taken provisional measures pursuant to Article 6.11, in reviewing the measures the TMB had also to assess this particular aspect as well. Its conclusions in this regard (see paragraphs 150, 160 and 165 above) should provide some guidance to Members with respect to the invocation of the provisions of Article 6.11.

179. As from the second half of 1995, the slow-down in the recourse to Article 6 may have resulted from the interaction of a number of factors. Among these, in the view of the TMB, the recognition that Article 6 provides strict requirements could have played an important role, supported by the standards established by the TMB, at least with respect to the determination of serious damage claimed, and by the availability of the possibility of having recourse to the provisions of the Dispute Settlement Understanding.

180. The operation of the ATC so far has demonstrated in practical terms that, unlike the MFA, the ATC is not an isolated Agreement but an integral part of the WTO system, particularly when it relates to the settlement of disputes. The two Panel and Appellate Body reports adopted by the DSB during the early part of 1997 have made a significant contribution in this regard. The Ministerial Declaration adopted in Singapore has also had an important impact, in particular in directing the TMB to further increase transparency by providing more detailed explanations and rationale behind its findings and recommendations, thus assisting the TMB in improving its standards over time and the TMB's efforts in this regard are reflected in its recent reports.

181. 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 objective of the discussion was to consider these reports, and in particular to identify those aspects of the legal findings provided in the particular cases which could provide further guidance also to the TMB in terms of its approach and methodology for the examination of the measures referred to it pursuant to Article 6. The TMB agreed to revert to this discussion.

#### **IV. QUANTITATIVE RESTRICTIONS NOTIFIED UNDER ARTICLE 2 AND ISSUES RELATED TO THE IMPLEMENTATION OF ARTICLE 2**

##### **A. SCOPE OF RESTRICTIONS INHERITED FROM THE MFA**

182. Article 2.1 of the ATC requires that all quantitative restrictions within bilateral agreements maintained under Article 4 of the MFA or notified under Article 7 or 8 of the MFA in force on the day before the entry into force of the WTO Agreement shall, within 60 days following such entry into force, be notified in detail, including the restraint levels, growth rates and flexibility provisions, by the Members maintaining such restrictions to the Textiles Monitoring Body. All such restrictions maintained between GATT 1947 contracting parties and in place on 31 December 1994 are governed by this Agreement. Article 2 continues, in paragraph 4, that the restrictions notified pursuant to paragraph 1 are "deemed to constitute the totality of such restrictions" on 31 December 1994 and no new restrictions in terms of products or Members are to be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions. In practice, these obligations applied to four WTO Members, Canada, the European Community, Norway and the United States. These notifications were circulated in documents G/TMB/N/60 to 63 and addenda.

1. Notifications Made Pursuant to Article 2.1

183. Canada provided a combined notification of restraints under Articles 2.1 and 3.1 (G/TMB/N/62) which included bilateral agreements maintained under Article 4 of the MFA or notified under Article 7 or 8 of the MFA with 26 WTO Members (Bangladesh, Brazil, Costa Rica, Czech Republic, Dominican Republic, Hong Kong, Hungary, India, Indonesia, Jamaica, Korea, Macau, Malaysia, Mauritius, Myanmar, Pakistan, Philippines, Romania, Singapore, Slovak Republic, South Africa, Sri Lanka, Swaziland, Thailand, Turkey and Uruguay). The information on unilateral restraints notified under Articles 7 and 8 of the MFA and not covered by Article 2 of the ATC, with 17 exporters comprising GATT 1947 contracting parties that were not yet WTO Members and trading partners that were neither GATT 1947 contracting parties nor WTO Members, is addressed in Chapter V, paragraph 235. It was stated that ATC benefits would be extended to GATT contracting parties upon the entry into force of the WTO Agreement for those Members. With respect to non-WTO/non-GATT trading partners, these matters would be governed by the terms of their accession to the WTO. The notification also listed the respective growth and flexibility provisions.

184. Canada's notification relevant to Article 2.1 comprised 205 quotas plus 39 sub-limits affecting 26 WTO Members. There were also three group limits (India, Macau and Swaziland) and two export authorizations without levels (Hong Kong). Subsequently, upon the accession of Bulgaria to the WTO, on 1 December 1996, Canada notified that the seven restrictions in place on the day prior to the accession would be carried over into the ATC, in accordance with the provisions of the report of the Working Party on the Accession of Bulgaria, with necessary adjustments, pursuant to Article 2.1.

185. The European Community listed all restrictions (G/TMB/N/60) covered by this Article *vis-à-vis* GATT contracting parties which were then Members of the WTO. These were separated into two categories of measures: Community level quantitative restrictions for direct imports and additional Community quantitative levels for goods re-imported under outward processing trade (OPT) programmes. Growth and flexibility provisions were also given.

186. The notification of restrictions for direct imports involved 14 Members (Argentina, Brazil, Hong Kong, India, Indonesia, Macau, Malaysia, Pakistan, Peru, Philippines, Singapore, Korea, Sri Lanka and Thailand) with a total of 199 specific quota levels plus 19 sub-limits. The notification of additional levels for OPT covered nine of these Members (India, Indonesia, Macau, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka and Thailand) and a total of 35 quota measures. As the European Community was enlarged to 15 Member States on the same day as the ATC entered into force, the notification presented both the amounts foreseen in the bilateral agreements for 1994, and adjusted quota levels to take into account the enlargement.

187. The European Community notified in June 1996 that, in recognition of improved market access for textile and clothing products extended by Pakistan and India, it agreed that it would provide to these Members further flexibility for the management of existing quota restriction (including carryover, carry forward and inter-category transfers), in addition to the flexibility already provided.

188. Norway notified the 54 specific quotas it maintained on imports from 16 WTO Members (the Czech Republic, Hong Kong, Hungary, India, Indonesia, Korea, Macau, Malaysia, Pakistan, the Philippines, Poland, Romania, Singapore, the Slovak Republic, Sri Lanka and Thailand). Norway also included in its notification 12 quotas maintained on imports from three non-WTO Members (China, North Korea and Vietnam) as well as a non-automatic import licensing procedure on imports of four product categories from Chinese Taipei. Norway stipulated,

however, that it would extend the benefits of the ATC only to WTO Members. The notification also set out growth and flexibility provisions for each of these restrictions (G/TMB/N/61).

189. The United States notified measures (G/TMB/N/63) maintained with 25 WTO Members (Bahrain, Bangladesh, Brazil, Costa Rica, the Czech Republic, the Dominican Republic, Hong Kong, Hungary, India, Indonesia, Jamaica, Kenya, Korea, Macau, Malaysia, Mauritius, Pakistan, the Philippines, Romania<sup>19</sup>, Singapore, Slovak Republic, Sri Lanka, Thailand, Turkey and Uruguay) and, for information purposes, the measures maintained with 12 non-WTO Members at that time (Bulgaria, China, Chinese Taipei, Colombia, Egypt, El Salvador, Fiji, Guatemala, Nepal, Oman, Poland and the United Arab Emirates). The notification of measures with WTO Members listed 650 specific limits comprising single categories, parts of categories or groupings of categories. Provision was made for group limits in 12 of the countries listed and an aggregate limit in one of them. The notification of measures maintained with non-WTO Members comprised 251 specific limits and three countries with group limits. The notifications included information on the 1995 levels as well as growth rates and flexibility provisions.

190. In subsequent addenda to the original notification, those exporters which had become WTO Members were moved from the listing provided "for information only" to the list of measures in place with WTO Members, that is, Bulgaria, Egypt, Fiji, Guatemala, Haiti, Poland, Qatar, and the United Arab Emirates. In addition, 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, the quantitative restrictions maintained by the United States on imports from Romania in force on the day before the implementation of the decision by the United States were notified, together with applicable growth rates and flexibility provisions.

191. Also in a subsequent addendum, the United States corrected its notification of guaranteed access levels (GALs) with Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti and Jamaica originally made under Article 3.1. Since these restrictions had been notified to the Textiles Surveillance Body and had been in force on 31 December 1994, the United States concluded that this notification should have been made under Article 2.1. It also corrected the notification of three restrictions with Kuwait, from Article 3.1 to Article 2.1.

## 2. Observations With Respect to Article 2.1 Notifications (Article 2.2)

192. Article 2.2 allowed Members to bring before the TMB any observation they deemed appropriate with regard to notifications made under Article 2.1, within 60 days of such notification. Four notifications were made, by Colombia (G/TMB/N/105), Hong Kong (G/TMB/N/106 and 148) and Macau (G/TMB/N/108), each in respect of the notification of the United States, and by Korea (G/TMB/N/120) in respect of notifications by Canada, the European Community and the United States. In reviewing the notifications made by Colombia, Hong Kong and Korea, the TMB noted that these observations had been taken into account in corrigenda or addenda to the notifications made under Article 2.1 by the WTO Members concerned.

193. The notification by Hong Kong, which referred to the list of restrictions notified by the United States requested, *inter alia*, that the full product descriptions, conversion factors applicable, coverage and structure of the groups and sub-groups should be notified with respect to Hong Kong as well as the category number for made-to-measure suits. In the ensuing discussion,

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<sup>19</sup>The notification with respect to Romania was without prejudice to the US' invocation of Article XIII of the WTO Agreement.

the TMB understood that these elements would be notified by the United States under Article 2.17; however, at the time of the present report, the United States has not yet notified the administrative arrangements with Hong Kong.

194. In Macau's observation, it was stated that the US' notification under Article 2.1 contained restrictions which were not in force on the day before the entry into force of the ATC under Macau's MFA bilateral agreement with the United States. The TMB invited both parties to provide written submission on this matter and, on this basis, it considered the elements put forward by both parties. Macau in essence argued that the Memorandum of Understanding (MOU) signed between Macau and the United States on 28 January 1994 did not allow for the automatic conversion by the United States of designated consultation levels (DCLs) on imports of products of US categories 219, 225, 317, 326, 611 and 625-9 from Macau into specific limits (SLs), and this conversion should be considered null and void. The United States essentially maintained that the observations of Macau with respect to the US notification under Article 2.1 and the request to the TMB, were without merit. According to the United States, in the MOU, signed in January 1994, Macau expressly agreed to the establishment of specific limits on fabric categories 219, 225, 317, 326, 611 and 625-9 for the purposes of the Uruguay Round transition mechanism (i.e. the ATC).

195. The TMB considered all the elements put forward by both parties in their submissions, including the reference made by Macau to the review of the bilateral agreement by the TSB in 1994. In particular, the TMB's attention centred on the MOU signed by the two parties on 28 January 1994, which, *inter alia*, envisaged the conversion of designated consultation levels on imports of products of US categories 219, 225, 317, 326, 611 and 625-9 from Macau into specific limits. The TMB noted that the parties did not agree on whether or not paragraph 2 of this MOU allowed for the conversion of fabric DCLs into SLs by the United States in the absence of agreement between the parties during the consultations envisaged in this paragraph.

196. The TMB noted that its review was conducted under Article 2.2. It found that a recommendation, as requested by Macau, that in the absence of either an agreement over the conversion of DCLs on US categories 219, 225, 317, 326, 611 and 625-9 into SLs, or actual trade in these fabric categories, the notification by the United States of those specific limits should be considered null and void, was not warranted. In arriving at its conclusions, the TMB took note that the conversion of DCLs into SLs took place in 1994 under the MFA. The TMB noted with concern, however, that SLs were introduced by the United States in the almost complete absence of trade in these categories. It was the expectation of the TMB that, in monitoring developments in this area, the United States would bear in mind this observation. The TMB also drew the attention of Members to the fact that, with the entry into force of the ATC, specific provisions had been in operation for the establishment of new restrictions.

### 3. Arrangements to Bring Restrictions into Line with Agreement Year (Article 2.3) and Treatment of MFA Article 3 Measures (Article 2.5)

197. Articles 2.3 and 2.5 were designed to facilitate the "bridge" between the former MFA and the entry into force of the ATC. Article 2.3 provides a means for bringing into line any period of restriction having a 12-month time-frame which is different from the calendar year envisaged in the ATC. Members could agree on a notional level for the 12-month period ending 31 December 1994. While no notifications were made under this provision, the TMB understood that in certain cases some adjustments had been made and incorporated into the notifications of levels under Article 2.1.

198. Article 2.5 was intended to provide for the treatment of any MFA Article 3 actions taken before 1 January 1995, whereby they would be permitted to remain in effect for up to 12 months with review of their consistency either by the Textiles Surveillance Body up to 31 December 1994 or the TMB thereafter, but under MFA rules. Further provision was made for the handling of disputes in respect of MFA Article 4 agreements, initiated before 1 January 1995, whereby they could be reviewed later by the TMB, applying MFA rules. No notifications were made citing these provisions.

4. Introduction of New Restrictions (Article 2.4)

199. Article 2.4 stipulates that the restrictions notified under Article 2.1 constitute the totality of such restrictions in force on 1 January 1995 and no new restrictions would be introduced except under the ATC or relevant GATT 1994 provisions. As the TMB had completed its review of notifications under Article 2.1 and observations under Article 2.2, it was assumed that the totality of restrictions applied pursuant to Article 2.1 had been notified, and that none of the elements contained in these notifications were either contested by other Members or required further consideration by the TMB.

200. In its examination of the request made by Costa Rica, the Panel "United States - Restrictions on imports of cotton and man-made fibre underwear" stated, *inter alia*, that in its view "the United States by violating its obligations under Article 6 of the ATC has *ipso facto* violated its obligations under Article 2.4 of the ATC as well".

201. In its examination of the request made by India, the Panel "United States - Measures Affecting Imports of Woven Shirts and Blouses from India" stated, *inter alia*, that "since we conclude that the safeguard action taken by the United States violated the provisions of Article 6 of the ATC, it is our view that the United States applied a restraint not authorized under the ATC, which, therefore, constitutes also a violation of Article 2.4 of the ATC".

202. In the request for consultations addressed to the United States with reference to measures affecting textile and apparel products (WT/DS85/1), the European Community stated, *inter alia*, "that these changes [to the US rules of origin for textile and apparel products] are not in conformity with the obligations of the United States under the WTO Agreement on Textiles and Clothing. Article 2.4 of the Agreement on Textiles and Clothing requires that no new restriction in terms of products or Members shall be introduced".

B. ELIMINATION OF RESTRICTIONS PURSUANT TO ARTICLE 2.15

203. In September 1995, Norway notified the TMB and the Members concerned of its elimination of certain restrictions maintained under the ATC effective 1 January 1996, citing Article 2.15 (G/TMB/N/130). Specifically, Norway removed restrictions on: (i) one-piece suits (part of category 1); (ii) trousers (category 2), both affecting 14 exporting countries; (iii) products falling under HS 6210 (part of category 1) affecting 16 exporting countries; (iv) knitted bed-linen (part of category 7) affecting 15 exporting countries; and, traps and pots (part of category 70) affecting six countries. Fourteen out of 54 restraints had been eliminated (see (ii) above), as well as restraints on part categories. The TMB commended Norway for the early elimination of some of its ATC restrictions.

204. In reply to specific questions put by the TMB, in June 1997, Norway had stated, *inter alia*, that it "was committed to a continuation of a policy of gradual liberalisation and expects to be able to notify later this year to the TMB (and to WTO Members directly concerned) further steps taken pursuant to Article 2, Section 15, of the ATC. Norway maintains restraints for a very limited group of products, and in this situation Norway had not found liberalisation by way of

integration the best way to proceed, but had pursued a policy of gradual liberalisation of products under restraint under Article 2.15. Norway was committed to continuing this policy".

#### C. IMPLEMENTATION OF GROWTH AND FLEXIBILITY PROVISIONS

205. The TMB noted that growth and flexibility provisions had been notified along with the restraint levels under Article 2.1 and these had not been challenged by any other Member. The TMB received no information which would have indicated that a problem had arisen in the implementation of Article 2.13 and 2.16. Further, the TMB did not see any indication of quantitative limits being placed on the combined use of swing, carryover and carry forward.

#### D. IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 2.18 (SMALL SUPPLIERS)

206. Article 2.18 states that, with respect to the Members whose exports were subject to restrictions on 31 December 1994 and whose restrictions represented 1.2 per cent or less of the total volume of the restrictions applied by an importing Member as of 31 December 1991 and notified under Article 2, meaningful improvement in access shall be provided, through advancement by one stage of the growth rates set out in Articles 2.13 and 2.14, or through at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions.

207. The TMB examined notifications by Canada, the United States and the European Community (G/TMB/N/183-185) on the improvements in access provided to those Members whose exports were subject to restrictions on 31 December 1994 and whose restrictions represented 1.2 per cent or less of the total volume of the importing Members' restrictions on 31 December 1991. The TMB understood that no exporting Member qualified under this provision in the case of Norway. Canada listed 16 Members which qualified for improved access under this provision: Costa Rica, Cuba, the Czech Republic, the Dominican Republic, Hungary, Jamaica, Lesotho, Macau, Mauritius, Myanmar, Poland, the Slovak Republic, South Africa, Sri Lanka, Swaziland and Uruguay. This improvement in access was effected by increasing the annual growth rates for the restrictions in force on 31 December 1994 by 25 per cent, in lieu of 16 per cent. Canada included in this list not only the Members qualified on 31 December 1991 but also those qualified on 31 December 1994, both groups of Members representing altogether over 9 per cent of the volume of Canada's total restraints.

208. The United States listed 22 Members qualified under this Article for improved access: Bahrain, Colombia, Costa Rica, Czech Republic, the Dominican Republic, Egypt, El Salvador, Fiji, Guatemala, Haiti, Hungary, Jamaica, Kenya, Kuwait, Macau, Mauritius, Poland, Qatar, Romania, the Slovak Republic, the United Arab Emirates and Uruguay. For these Members, the annual growth rates applicable to the restraints were advanced by one stage by increasing them by 25 per cent for the first stage, in lieu of 16 per cent.

209. The European Community notified that two Members were qualified under this Article for improved access: Peru and Sri Lanka. For these Members, the annual growth rates applicable to the restraints were advanced by one stage by increasing the annual growth rates applied to the restraints for the first stage first by 16 per cent and second by 25 per cent, in lieu of 16 per cent.

210. The TMB observed that the implementation of this provision of the ATC had been made by the Members concerned using different methodologies and no Member used the option of equivalent changes with respect to a different mix of base levels, growth and flexibility provisions. It was observed that Article 2.18 does not provide precise guidance as to how to implement the

advancement by one stage of the growth rates set out in Articles 2.13 and 2.14, or how to apply "at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions". However, it was noted that the result in terms of market access in the first stage would have been improved if the methodology chosen for the advancement by one stage of the growth rates included the growth factor of the first stage, as done by one Member.

211. In their contribution to the request for information made by the TMB, two Members provided comments relevant to the implementation of Article 2.18. One Member stated that the methodology used for calculating the advancement by one stage of growth for small suppliers needed to be clarified. Another Member expressed the view that the ATC had not been implemented in a fashion which provided any preferential treatment to small suppliers. Even where quotas notified to the TMB on 1 January 1995 were very small, the importing countries had not made any special dispensation for such suppliers either at the time of the commencement of the ATC implementation or through the subsequent integration schedules notified to the TMB. This Member stated that the definition of small suppliers should cover countries which have marginal access to the markets of the importing countries in specific categories.

212. When preparing the present report, the TMB had another discussion on whether it could provide further clarification with respect to the methodology to be used in calculating the advancement by one stage of growth for small suppliers. This discussion confirmed the view that Article 2.18 does not provide precise guidance in this regard. Attention was drawn, however, once again to the fact that the methodology chosen by the European Community for the implementation of this provision is more beneficial in terms of providing meaningful improvement in access to the market for their exports. The TMB expects that the Members which notified restrictions pursuant to Article 2.1, will in due course, but in any case prior to the implementation, notify to the TMB as to how they intend to implement the provisions of Article 2.18 during the second stage of integration.

213. As to the reference to Members having a marginal access to the markets of the importing countries in specific categories (see paragraph 211 above), the TMB observed that the particular provisions of Article 2.18 provided a definition related to the share of restrictions taken globally and not specific to individual product categories. However, Members having only marginal access in a number of specific categories would presumably qualify for benefitting from the provisions of Article 2.18. The TMB reiterated the importance of a faithful and credible implementation of the provisions of the ATC related to small suppliers and new entrants, including those inscribed in Article 2.18.

#### E. ADMINISTRATIVE ARRANGEMENTS (ARTICLE 2.17)

214. The ATC provides that administrative arrangements, as deemed necessary in relation to the implementation of any provision of Article 2, shall be a matter for agreement between the Members concerned. Accordingly, such arrangements were concluded by Canada, with 24 Members (Bangladesh, Brazil, Costa Rica, Cuba, Hong Kong, Hungary, India, Indonesia, Korea, Lesotho, Macau, Malaysia, Mauritius, Pakistan, Philippines, Poland, Romania, Singapore, Slovak Republic, Sri Lanka, Swaziland, Thailand, Turkey and Uruguay). In its examination, the TMB noted that these arrangements had been bilaterally agreed and contained provisions which implemented administrative aspects of the export control systems (export licenses, monitoring of exports, quota flexibility provisions, exchange of statistics, re-exports by Canada and consultations).

215. The TMB also examined the administrative arrangements concluded between the European Community and 13 Members (Argentina, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Pakistan, Peru, the Philippines, Singapore, Sri Lanka and Thailand). The TMB observed that, in the case of India, Indonesia, Korea, Macau, Malaysia, Pakistan, Peru, the Philippines, Singapore, Sri Lanka and Thailand, the administrative arrangements reproduced certain provisions of previous bilateral textile agreements. In the case of Argentina, provisions of the previous agreement were notified, which, as agreed between the two Members, would be notified as administrative arrangements under Article 2.17. The European Community and Hong Kong had negotiated a self-contained administrative arrangement.

216. The administrative arrangements notified by the European Community, though differing in some aspects, all addressed the issues of product classification, determination of origin, treatment of re-imports after processing and imports for re-export after the same, exchange of statistical information, cooperation in preventing circumvention, "regional concentration", consultation procedures, double-checking systems for products subject to restraints and administrative cooperation and, in the majority of cases, exemption of hand-made cottage industry products and traditional folklore handicraft products from quantitative restrictions under certain criteria.

217. The TMB recalled that, pursuant to Article 2.17, Members could agree on administrative arrangements as deemed necessary in relation to the implementation of the provisions of this Article. It recognized that a number of provisions in the administrative arrangements notified, designed to ensure the proper administration of the restrictions notified under Article 2.1, fell within the parameters defined in Article 2.17. It observed, however, that not all the provisions in these arrangements were fully related to the implementation of the provisions of ATC Article 2, but could have been addressed in some of its other Articles. It noted that the European Community and the Members concerned had deemed it necessary to include in the administrative arrangements provisions of the previous bilateral agreements which could have a potential effect on the implementation and administration of quantitative restrictions notified by the European Community pursuant to Article 2.1. In addition, the attention of the TMB was drawn to the provisions of the EC's implementing legislation on the common import regime for textile and clothing products, which clarified that the implementation of provisions such as the ones included in the administrative arrangements was not intended to constitute a derogation from the provisions of the ATC. In light of the above, the TMB expected that these administrative arrangements would be implemented by the respective Members in conformity with the relevant provisions of the ATC.

218. The United States notified administrative arrangements bilaterally agreed between the United States and Bangladesh, 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. These arrangements were in the form of provisions which had been drawn from previous bilateral agreements concluded between the United States and the Members concerned; these provisions had been agreed as being necessary for the proper implementation of restrictions notified to the TMB by the United States under Article 2.1 of the ATC. The TMB observed that this approach resulted in some respects in texts which were not easily understood, and also in some instances gave the impression that some of the provisions of the administrative arrangements were not fully consistent with others. The written replies of the United States to the TMB's requests for clarification provided some guidance in this regard.

219. While the structure and language of these administrative arrangements differed from one another, they all addressed issues such as: product coverage and related issues of classification;

flexibility adjustments; overshipment charges; spacing provisions; exchange of data and information; US assistance in implementing the limitation provisions; consultation on implementation questions; "mutually satisfactory administrative arrangements"; and cooperation in the prevention of circumvention. The majority also contained provisions related to a correct category/quantity visa system and to commercial samples and personal shipments. Some also contained provisions concerning the treatment of imports of handloom products.

220. In reviewing these arrangements pursuant to Article 2.21, the TMB observed that in several instances the consistency of some provisions of the administrative arrangements with the ATC could be questioned, such as, for example, the possibility for the parties to the United States/Guatemala arrangements "to agree to put up new categories under quota"; or the possibility for the Dominican Republic, Guatemala and Haiti to apply for new guaranteed access levels; or a provision in the context of flexibility adjustments of some arrangements which enabled the United States to "supply adjustments ... to any specific limit whenever that adjustment appears appropriate to facilitate the flow of trade and the sound administration" of the administrative arrangement. In reply to clarifications sought by the TMB, the United States stated that when provisions of the administrative arrangements were inconsistent with the ATC, the provisions of the ATC would apply.

221. The TMB noted that a number of the provisions of the administrative arrangements were related to the implementation of the restrictions notified pursuant to Article 2.1 and, thus, were qualified for inclusion into the arrangements agreed upon under Article 2.17. The TMB observed, however, that some of the provisions could have been addressed in some Articles other than Article 2 of the ATC. This applied in particular to the provisions related to cooperation in the prevention of circumvention. The TMB noted, *inter alia*, that Article 5.4 of the ATC seemed to provide some flexibility in terms of remedies or agreed actions that could be foreseen in cases when circumvention had occurred, but observed, however, that Article 5 contained no reference to the possibility for the importing Member to impose triple charges on quotas, as a deterrent to circumvention. The TMB noted in this regard that this provision had not been utilized by the United States. The TMB recalled that the United States had stated that when provisions of the administrative arrangements were inconsistent with the ATC the provisions of the ATC would apply. The TMB understood that this statement applied to each and every provision of the arrangements notified, and expected, therefore, that all the provisions of these administrative arrangements would be implemented by the respective Members in conformity with the relevant provisions of the ATC. The TMB's taking note of the administrative arrangements notified by the United States was without prejudice to the rights and obligations of WTO Members arising from the ATC (G/TMB/R/31).

222. No notification pursuant to Article 2.17 was received from Norway. The TMB understood in this respect that so far administrative arrangements for the purpose of implementing the provisions of Article 2 had not been deemed necessary.

F. SAFEGUARD ACTIONS UNDER ARTICLE XIX OF GATT 1994 IN TERMS OF ARTICLES 2.19 AND 2.20 OF THE ATC

223. Articles 2.19 and 2.20 refer to safeguard actions taken under GATT Article XIX during the life of the ATC but within one year of the integration of that product pursuant to ATC Article 2. It sets out provisions relating to the appropriate levels for such restrictions. In the period under review these provisions have not been invoked. With the exception of the initiation by Argentina of an investigation with a view to imposing provisional safeguard measures under Article 12 of the Agreement on Safeguards on imports of footwear products, some of which fall within the coverage of the ATC, there have been no safeguard actions initiated under GATT

Article XIX on products covered by the ATC. The TMB notes however that, in respect of the action by Argentina, those products subject to the investigation which fall within the coverage of the ATC have not been integrated into the GATT 1994 by Argentina.

**G. REVIEW OF IMPLEMENTATION OF ARTICLE 2 (ARTICLE 2.21)**

224. Article 2.21 requires the TMB to keep the implementation of Article 2 under review. In this regard, the TMB reviewed notifications made pursuant to Articles 2.1, 2.2, 2.6 and 2.7(a) and (b), 2.8(a) and 2.11, 2.15, 2.17 and 2.18. Further, Article 2.21 obligates the TMB to review any matter relevant to Article 2 at the request of a Member. In this regard, the TMB reviewed a communication made by Colombia, also on behalf of several other WTO Members that are members of the International Textiles and Clothing Bureau (ITCB), concerning the conversion of import data into a common volume unit, using appropriate conversion factors, and possible inconsistencies with respect to the allocation of products into the four groupings: tops and yarns, fabrics, made-up textile products and clothing. The TMB was asked to consider this matter and provide suitable guidance to Members. The TMB also reviewed another notification made by Colombia, also on behalf of a number of other WTO Members that are members of the ITCB, alleging certain discrepancies in the programme of integration notified by the European Community under ATC Article 2.6 (G/TMB/N/1), and requesting the TMB to review this matter in terms of Article 2.21.

225. The TMB received, on 7 July 1997, a communication from the European Community, referring to the examination and recommendation by the TMB of the above-mentioned communication by Colombia, and requesting the TMB to review pursuant to Article 2.21 the matter of whether certain Members, which had included in their integration programmes products covered by the HS lines defined by reference to "ex-positions" in HS Chapters 30 to 49 and 64 to 96 in the Annex to the ATC, had counted in such programmes the volume of imports of the precise products described in the Annex, or the volume of imports of the whole relevant six-digit HS lines.

226. As these questions related to various aspects of the product integration process, they are addressed in Chapter II of this report.

**V. RESTRICTIONS OTHER THAN THOSE REFERRED TO IN CHAPTER IV**

**A. RESTRICTIONS NOTIFIED PURSUANT TO ARTICLE 3.1 AND THEIR REVIEW**

227. Article 3.1 provides for the notification, within 60 days following the date of entry into force of the WTO Agreement, of all restrictions on textile and clothing products, other than those maintained under the MFA and covered by Article 2 of the ATC (see Chapter IV), whether consistent with GATT 1994 or not. The notifications were to indicate, where applicable, the GATT 1994 justification for the restrictions.

228. Twenty-nine Members submitted notifications under Article 3.1 (Bangladesh, Canada, Chile, Cyprus, Egypt, the European Community, Hungary, India, Indonesia, Japan, Kenya, Korea, Macau, Malaysia, Malta, Mauritius, Mexico, Morocco, New Zealand, Pakistan, Peru, Philippines, Saint Kitts and Nevis, Singapore, Slovenia, Sri Lanka, Thailand, the United States and Venezuela). Of these, ten Members (though not required under the provisions of Article 3) reported that they maintained no restrictions of the type referred to in this Article (Chile, Indonesia, Kenya, Macau, Mauritius, New Zealand, Philippines, Saint Kitts and Nevis, Singapore and Sri Lanka). The TMB took note of these ten notifications.

229. Nineteen Members (Bangladesh, Canada, Cyprus, Egypt, the European Community, Hungary, India, Japan, Korea, Malaysia, Malta, Mexico, Morocco, Pakistan, Peru, Slovenia, Thailand, the United States and Venezuela) notified quantitative restrictions, usually on specific textile and clothing products, although some measures were broad in their coverage. In most of these cases, the TMB sought further information or clarification, in order to ensure a better understanding of the measures in question for WTO Members.

230. In three notifications under Article 3.1, the provisions of GATT Article XVIII:B were cited with the measures being part of the overall reviews of such restrictions by the Committee on Balance-of-Payments Restrictions (Bangladesh, India and Pakistan). The list of restricted products submitted by Bangladesh (G/TMB/N/80) comprised a wide variety of woollen and knitted fabrics of cotton and synthetic fibres plus second-hand clothing. The notification of Pakistan (G/TMB/N/81) extended to woven fabrics of cotton and synthetic fibres, carpets, knitted fabrics, made-up textile articles and clothing. India, in response to a request for clarification, informed the TMB (G/TMB/N/72) that all products in the Annex to the ATC had been covered by quantitative restrictions in terms of GATT Article XVIII:B as of 1 January 1995; however, imports of several textile and clothing items had been liberalized in February 1995 with a number of fibres, yarns and industrial fabrics permitted to be imported freely by all persons without an import licence and a number of fabrics, made-ups and garments permitted to be imported against special import licences. In addition, two notifications (Egypt, Korea) referred also to measures which had been maintained with reference to Article XVIII:B and which would continue to remain in place for a certain period of time after the formal disinvocation of the said provisions. Korea provided information (G/TMB/N/68) on its restriction on imports of silk yarn and certain silk fabrics under Article XVIII:B. The TMB noted that these measures were covered by Korea's programme of liberalization of balance-of-payments measures notified to the GATT Council in 1994 and were scheduled to be removed or brought into conformity with GATT on 1 July 1997. Also in response to a request for more information on the restrictions in place, Egypt reported (G/TMB/N/91) that it was maintaining a conditional prohibition on imports of textiles until 1 January 1998 and on clothing until 1 January 2003, as part of its programme for the disinvocation of Article XVIII:B undertaken in 1995 whereon the Committee on Balance-of-Payment Restrictions stated that "the Committee understood that Egypt has thus disinvoked Article XVIII:B with effect from 30 June 1995, and that, on the basis of the implementation of the commitments by Egypt in Schedule LXIII, Members would exercise due restraint in the application of their rights under the Multilateral Agreements on Trade in Goods in relation to fabrics, apparel and made-up items remaining subject to conditional prohibition". The TMB took note of these notifications.

231. The TMB noted that Malaysia maintained a non-automatic licensing measure on batik sarongs which, according to the notification (G/TMB/N/93), was justified under GATT Article XVIII:C and had been notified to GATT 1947 in July 1984.

232. Four Members reported restrictions on the importation of used or worn clothing, three citing the provisions of GATT Article XX(b) (Morocco, Peru, Venezuela (G/TMB/N/188, 83, 85)). The TMB took note of these notifications. According to its notification (G/TMB/N/70), Mexico maintained a ban on imports of used clothing, which found its "basis and justification in the Protocol of Accession of Mexico to GATT 1947, which forms an integral part of GATT 1994 in accordance with Annex 1A, paragraph 1(b)(ii) of the Final Act of the Uruguay Round". The TMB sought additional information from Mexico with respect to the particular provision of the Protocol of Accession under which this import prohibition fell. In the absence of additional information from Mexico despite further reminders, the TMB decided to conclude the consideration of this notification, noting that Mexico had not provided the additional information which had been requested by the TMB. Malta (G/TMB/N/67) reported quantitative restrictions on

the importation of hand-made lace, which, according to the notification, had been justified under the terms of GATT Article XX(f).

233. Thailand (G/TMB/N/71) notified that it maintained non-automatic import licensing under GATT Article XVIII:C on silk yarn and jute bags, applicable to all sources. The TMB sought more detailed information from Thailand on this non-automatic import licensing system, including whether it had been notified to the GATT or to the WTO. In the absence of additional information despite further reminders, the TMB decided to conclude the consideration of this notification, noting that Thailand had not provided the additional information.

234. The European Community provided two notifications (G/TMB/N/64 and 65), one for its quantitative limits with Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia, which were covered by Additional Protocols to the Europe Agreements notified to the GATT/WTO under Article XXIV. These Additional Protocols provided for the elimination of the restrictions by 1 January 1998. The other notification referred to consultation levels maintained with Egypt, Malta, Morocco, Tunisia and Turkey in the context of preferential trade agreements notified under GATT Article XXIV. The consultation levels with Egypt, Morocco and Tunisia would be eliminated through the expected completion of free-trade areas with these countries while in the case of Malta and Turkey the consultation levels would be eliminated in the context of the expected customs unions with these countries (see also paragraph 243 below).

235. Canada and the United States provided notifications under Article 3.1 to set out the quantitative restrictions in place with exporters which were not, at that time, WTO Members. In the case of Canada (G/TMB/N/62), a combined notification under Articles 2.1 and 3.1 was provided in order to present a total picture of all quantitative restrictions with WTO Members, plus GATT 1947 contracting parties that were not yet WTO Members and trading partners that were neither GATT 1947 participants nor WTO Members (Bulgaria, Cambodia, China, Cuba, North Korea, Laos, Lebanon, Lesotho, Nepal, Oman, Poland, Qatar, Russia, Syria, Taiwan, United Arab Emirates and Vietnam). The United States notified quantitative restrictions (G/TMB/N/66) in place with GATT contracting parties which had not yet become WTO Members and with countries which were neither GATT contracting parties nor WTO Members (Haiti, Laos, Former Yugoslav Republic of Macedonia, Qatar and Ukraine). The United States subsequently reported amendments to this notification, all of which were noted by the TMB. In the TMB's review of these notifications, measures applicable to countries which had since become Members of the WTO and would fall under the coverage of Article 2.1 were examined under the provisions of that Article.

236. Other notifications of quantitative restrictions, submitted by Hungary, Japan and Slovenia, provided phase-out programmes pursuant to Article 3.2(b) (see paragraphs 239 to 241), while the notification by Cyprus was ultimately considered to be more appropriate to Article 3.2(a) (see paragraph 238).

## B. IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 3.2

237. Article 3.2 provides for the restrictions notified in Article 3.1, except those justified under a GATT 1994 provision, to be either: (a) brought into conformity with GATT 1994 within one year following the entry into force of the WTO Agreement; or (b) phased out progressively according to a programme to be presented to the TMB not later than six months after the date of entry into force of the WTO Agreement.

1. Measures Brought into Conformity with GATT 1994 (Article 3.2(a))

238. Cyprus notified restrictions (G/TMB/N/69) on imports of several textile and clothing products, including a prohibition on imports of fishing nets and nets for catching birds, which, according to the notification, was applied under GATT Article XX(b) in order to protect the environment. Subsequently, the restrictions were eliminated with effect as from 1 January 1996, with the exception that imports of fishing nets remained subject to import licensing. The TMB took note of this notification. This licensing requirement was notified to the Committee on Import Licensing (G/LIC/N/3/CYP/1/Rev.1).

2. Programmes for the Phasing-out of Restrictions (Article 3.2(b))

239. Three Members notified phase-out programmes pursuant to Article 3.2.(b): Hungary, Japan and Slovenia (G/TMB/N/147, 175 and 186). The TMB took note of these programmes. In the case of Hungary, a four-step programme was reported which would remove the restrictions on five categories of textile and clothing products maintained under a consumer goods global quota. On 1 January 1995, 20 per cent of the total volume of 1992 imports of textile and clothing products subject to these quotas was liberalized, to be followed by a further 25 per cent of the remaining volume on 1 January 1998, then a further 50 per cent of the remaining volume on 1 January 2002; the remaining restrictions would be liberalized on 1 January 2005. The TMB observed that in view of the general nature of this programme, it expected that the details of its implementation in the respective stages would be notified to the TMB, prior to their implementation, for its consideration.

240. In the case of Japan, it was reported that the removal of the measures relating to the importation of silk yarns and fabrics from Korea would be achieved within the parameters of Article 3.2(b), however, the specific programme was to be linked to the import system for raw silk which would not be finalized until the last year of the implementation of the Agreement on Agriculture. Hence, the final terms of the phase-out for fabrics and yarns could only be provided at that time. The TMB expressed the expectation that the implementation of the programme, in conformity with Article 3.2(b), would be such as to provide appropriate progressive increases to the level of restrictions on imports of silk yarn and silk fabric from Korea.

241. Slovenia notified a three-phase programme to remove quantitative restrictions on an extensive list of textile and clothing products, identifying the specific products for liberalization on 1 January 1997, 1 January 2001 and 1 January 2005. In addition, the quota levels for 1996 had been increased by 7 per cent. Slovenia subsequently confirmed that for 95 products out of the total of 140 products the restrictions had been abolished on 1 January 1997 (G/TMB/N/243).

C. INFORMATION WITH RESPECT TO NEW RESTRICTIONS OR CHANGES IN EXISTING RESTRICTIONS (ARTICLE 3.3)

242. Article 3.3 requires that Members provide to the TMB, for its information, notifications submitted to any other WTO bodies with respect to any new restrictions or changes in existing restrictions on textile and clothing products, taken under any GATT 1994 provision, within 60 days of their coming into effect.

243. The TMB received three notifications made pursuant to this paragraph by the European Community (G/TMB/N/150-152). Two notifications contained agreed changes increasing the quantitative limits maintained *vis-à-vis* the Czech Republic, Hungary, Poland, Romania and the Slovak Republic, and increasing the consultation levels with Egypt, Malta, Morocco and Tunisia (see paragraph 234). The third notification stated that, as a result of the

completion of the customs union between the European Community and Turkey, the consultation levels notified by the EC under Article 3.1 *vis-à-vis* Turkey (G/TMB/N/65) had been eliminated as of 1 January 1996. The TMB took note of this information.

D. REVERSE NOTIFICATIONS AND RESTRICTIONS NOT NOTIFIED (ARTICLE 3.4)

244. Article 3.4 allows any Member to make reverse notifications to the TMB for information purposes, in regard to the GATT 1994 justification for measures maintained, or in regard to any restrictions that may not have been notified under the provisions of this Article. Actions with respect to such notifications may be pursued under relevant GATT 1994 provisions or procedures in the appropriate WTO body. No notification was made explicitly under this provision.

E. OBSERVATIONS WITH RESPECT TO THE APPLICATION OF ARTICLE 3

245. The TMB recalled in particular the provision in Article 3.3 calling on Members to provide to the TMB "notifications submitted to any other WTO bodies with respect to any new restrictions or changes in existing restrictions on textile and clothing products, taken under any GATT 1994 provisions ...". In this regard, the TMB was aware that some measures had been taken resulting in the introduction of quantitative restrictions or changes in existing quantitative restrictions on textiles and clothing trade. Citing Article 2 of the ATC, Hong Kong had formally requested consultations with Turkey in February 1996 under GATT Article XXII:1 and pursuant to DSU Article 4, regarding the unilateral imposition of quantitative restrictions by Turkey on imports of a broad range of textile and clothing products from Hong Kong, effective 1 January 1996 (WT/DS29/1). Hong Kong considered these restrictions to be inconsistent with certain GATT Articles and with obligations under Article 2 of the ATC. Turkey had accepted to enter into bilateral consultations with Hong Kong in order to discuss this matter, which, in the view of Turkey, was covered by Article XXIV:8(a) of the GATT 1994. Turkey further stated that the measures in question had been adopted in order to fulfil the obligations pursuant to the relevant decision of the EC-Turkey Association Council under which Turkey was expected to transpose the EC's import regulation into its domestic legislation. Subsequently, requests to join in these consultations pursuant to DSU Article 4.11 were made by Brazil, Canada, the European Community, India, Korea, Malaysia, Peru, Philippines and Thailand (WT/DS29/- series). In March 1996, India, and in June 1996, Thailand formally requested consultations with Turkey under GATT Article XXIII.I and Article 4 of the DSU, also citing Article 2 of the ATC (WT/DS34/1 and WT/DS47/1). Hong Kong and India had provided copies of their requests for consultation with Turkey to the TMB. The TMB observed that the notification of these measures, which it understood had been submitted to the relevant WTO body, had not been provided by the Member adopting them to the TMB for its information, in accordance with Article 3.3.

246. Some measures had been reported to the Committee on Balance-of-Payments Restrictions, which would appear to represent changes in existing restrictions affecting textiles and clothing trade. Nigeria reported the removal of textile fabrics and articles from its Import Prohibition List (WT/BOP/6/Rev.1/Add.2); Pakistan referred to the elimination of certain products from its Negative List with the imports of most textile items being allowed as from 1994-1995 (WT/BOP/15, paragraph 61); Tunisia reported that the list of products subject to import restriction (List B) had been shortened in November 1995 by eliminating made-up textile products (WT/BOP/15); India advised of a liberalization of its import regime with restrictions being lifted on a number of products including some clothing (WT/BOP/16, paragraph 26). In addition, India notified to the Committee (WT/BOP/N/24) a liberalization of quantitative restrictions maintained on imports since December 1995.

247. The TMB observed that none of the notifications of the measures mentioned in paragraph 246 above had been provided to the TMB, for its information, by the Members concerned. It is important that the TMB be informed also about the changes in existing restrictions on textile and clothing products taken under any GATT 1994 provision, in accordance with Article 3.3.

## **VI. ADMINISTRATION OF RESTRICTIONS; CHANGES IN PRACTICES, RULES, PROCEDURES AND CATEGORIZATION OF PRODUCTS**

### **A. ADMINISTRATION OF RESTRICTIONS**

248. Article 4.1 of the ATC states that "restrictions referred to in Article 2 and those applied under Article 6, shall be administered by the exporting Members. Importing Members shall not be obliged to accept shipments in excess of the restrictions notified under Article 2, or of restrictions applied pursuant to Article 6".

249. The administrative arrangements notified to the TMB by Canada, the European Community and the United States entrust the exporting countries with the administration of restrictions (see paragraphs 214 to 221). As noted by the TMB during its review, some of the arrangements concluded by one importing Member provided that Member with the possibility of making adjustments to the levels of existing restrictions. The TMB expects in this respect that all the provisions of these administrative arrangements would be implemented by the respective Members in conformity with the relevant provisions of the ATC, including Article 4.1. Apart from the notifications of the administrative arrangements, the TMB has not received any specific notification related to the implementation of the provisions of Article 4.1.

### **B. CHANGES IN PRACTICES, RULES, PROCEDURES AND CATEGORIZATION OF PRODUCTS**

250. According to Article 4.2, "... the introduction of changes, such as changes in practices, rules, procedures and categorization of textile and clothing products, including those changes related to the Harmonized System, in the implementation or administration of those restrictions notified or applied under this Agreement should not: upset the balance of rights and obligations between the Members concerned under this Agreement; adversely affect the access available to a Member; impede the full utilization of such access; or disrupt trade under this Agreement".

251. The administrative arrangements agreed between the European Community and the respective exporting Members include certain provisions related to subject matters covered by Article 4.2. These provisions confirm that any amendment to the rules of origin, to the tariff and statistical nomenclatures in force in the European Community or any decision which results in a modification of classification of products shall not have the effect of reducing any quantitative limit (maintained under the ATC). The administrative arrangements concluded by Canada and the United States do not contain similar provisions.

252. Article 4.4 provides that where changes mentioned in Article 4.2 are necessary, the Members initiating such changes inform and, wherever possible, initiate consultations with the affected Member or Members with a view to reaching a mutually acceptable solution regarding appropriate and equitable adjustments. Consultations, wherever possible, shall be held prior to the implementation of the changes. If this is not feasible, consultations at the request of the Member(s) concerned have to be held, if possible, within a period of 60 days. If a mutually satisfactory solution is not reached, any of the Members involved may refer the matter to the TMB for recommendations as provided for in Article 8 of the ATC.

253. The administrative arrangements concluded by the European Community foresee consultations with the exporting Members with a view to honouring these obligations (see paragraph 251 above). The administrative arrangements concluded by Canada and the United States do not contain specific provisions for similar types of cases.

254. The TMB received one communication which referred to the provisions of Article 4. In July 1966, the Philippines submitted a communication pursuant to Articles 8.5 and 4.2 regarding changes in the US rules of origin, which, it was argued, adversely affected imports into the United States of certain textile products from the Philippines and upset the balance of rights and obligations between the two parties under the ATC. At its meeting in July 1996, the TMB was informed by the Philippines and the United States that they had decided to continue consultations on the matter, and therefore, requested the TMB to defer its consideration of this communication. At the request of the Philippines, this issue was kept on the agenda of subsequent TMB meetings, but its consideration was repeatedly deferred, as both Members indicated that they preferred to wait for the outcome of their bilateral consultations. At its twenty-seventh meeting (in March 1997), the TMB took note of a further communication from the Philippines whereby it requested that the matter it had raised regarding changes in the US rules of origin be removed from the TMB's agenda, in view of a mutually agreed solution between the Philippines and the United States. The Philippines stated that this was without prejudice to its rights under the ATC, in particular under the provisions of Article 8. Since then the TMB has not received any further communication from the parties.

255. The TMB was informed that on 22 May 1997, the European Community had requested consultations with the United States pursuant to Article 4 of the Understanding of Rules and Procedures Governing the Settlement of Disputes, Article 8.4 of the Agreement on Textiles and Clothing, Article 7 of the Agreement on Rules of Origin, Article 14 of the Agreement on Technical Barriers to Trade and Article XXII of the GATT 1994 regarding the change to US rules of origin for textile and clothing products. In this submission, the European Community referred to the fact that the United States had introduced changes to its rules of origin for textile and clothing products, which entered into force on 1 July 1996. Some of these rules, in particular the rules contained in Section 334 of the Uruguay Round Agreements Act and implemented through customs regulation, adversely affect exports of EC's fabrics, scarves and other flat textile products to the United States. As a result of this change, the European Community products are no longer recognized in the United States as being of EC origin and lose the free access to the US market that they enjoyed before.

256. The request for consultations states, *inter alia*, the following: "The European Community considers that these changes are not in conformity with the obligations of the United States under the WTO Agreement on Textiles and Clothing. Article 2.4 of the Agreement on Textiles and Clothing requires that no new restriction in terms of products or Members shall be introduced. Article 4.2 of the same Agreement prescribes that the introduction of changes in the implementation or administration of restrictions notified to the WTO shall not: upset the balance of rights and obligations between the Members; adversely affect the access available to a Member; impede the full utilisation of such access; or disrupt trade under the Agreement. The European Community is of the view that the change in US rules of origin causes precisely those effects and that the United States should have initiated consultations with the European Community prior to the implementation of such changes, in accordance with Article 4.4 of the Agreement".

257. In communications, dated June 1997, addressed to the Dispute Settlement Body and the two Members concerned, the Dominican Republic, Honduras, Hong Kong, India, Japan, Pakistan and Switzerland notified that they considered themselves to have a substantial trade interest in the

consultations requested by the European Community and therefore wished to join in these consultations.

258. The issues subject to the complaint of the European Community have not been referred to the TMB. However, the European Community has commented on this issue in a communication to the TMB in response to the TMB's request for information regarding the implementation of particular ATC provisions (the substance of this communication is to be found in paragraph 262 below).

259. The issue of contemplated changes in the US rules of origin was also raised in the Committee on Rules of Origin, at its meeting of 8 March 1996. The representatives of Canada, the European Community and Switzerland expressed concern with respect to these changes, whereas the representative of Hong Kong stated, *inter alia*, that the changes were expected to have a severe impact on textiles and clothing trade with the United States. It was also regretted that major changes were to be introduced at a time when work was in progress on the Harmonization Work Programme which was intended to bring about a uniform set of harmonized rules for application to all non-preferential trade purposes. The representative of the United States took note of the comments made.

260. During a discussion in the Council for Trade in Goods in the Autumn of 1996 on the implementation of the ATC, concerns were expressed that the United States had implemented changes in its rules of origin for textile and clothing products as an instrument of trade policy. This, it was argued, was contrary to the provisions of the Agreement on Rules of Origin as well as Article 4 of the ATC, and had introduced great uncertainty and unpredictability with adverse effects on the exports of a large number of Members. It was also claimed that these changes had had the effect of restricting the access of certain items for certain Members where no MFA restrictions existed before.

261. In response, the representative of the United States stated that Article 4 of the ATC involved changes such as those in the rules and practices concerning the implementation and administration of restrictions maintained under the ATC. On rules of origin, Members requesting consultations under Article 4 were required to show that there had been a change in the implementation of the restrictions and if that was the case, that they had been adversely affected or trade disrupted. In a number of consultations with various Members it could be established that the implementation of restrictions on some of the trade had in fact not changed. In other cases, where change could be demonstrated, the United States was working towards a mutually satisfactory solution. No country had brought to the TMB, as required by the ATC, any difficulties that they could have had with the revised US rules of origin (see G/L/134, paragraphs 16.22 and 16.23).

262. Some of the replies received from Members with regard to the TMB's request for information regarding the implementation of particular ATC provisions also addressed the changes in the US rules of origin. One Member stated, *inter alia*, that Article 4.2 stipulated that the introduction of changes, such as changes in rules including those relating to the Harmonized System should not obstruct the balance of rights and obligations between the Members or adversely affect the access available to a Member under the ATC. The United States had effected changes in the rules of origin for textile products originating worldwide. The most prominent change was in the made-ups, where the new rule stipulated that the country of origin was the country where the fabric was formed rather than the country where the product was made. This Member further stated that these changes would have far reaching consequences for export of finished fabrics especially when these fabrics were converted into bedlinen/bed sheets in a third country. These new rules had shifted the basis of origin in respect of bed linen to the country in

which the fabric was woven rather than the country in which substantial transformation of the fabric took place. Instances had already come to notice where the Member's suppliers of fabrics had obtained quotas to clear held up consignments in this importing Member even though the fabrics had been cleared duty paid into the country of importation. By amending the rules of origin at a time when the WTO was engaged in formulating a comprehensive set of guidelines on the matter, the concerned importing Member appeared to be pursuing its own protectionist agenda. It was, therefore, considered that these measures were meant to restrict the market access of the exporting countries in the importing Member concerned, notwithstanding the global commitment with world trade liberalization. In the view of another Member, the changes in the rules of origin notified and implemented by the United States in 1996 had trade distortive implications. The exporting countries, contrary to the provision of Article 4, had been placed in a situation of disadvantage. The options available to the exporting countries were either to lose the trade in a particular category due to the administrative changes or to seek compensation through bilateral consultations. Another Member stated that "given the effect that changes in practices, procedures and categorization can have on the implementation or administration of restrictions, the ATC makes specific provision concerning the introduction of those changes. In particular they should not upset the balance of rights and obligations between Members, adversely affect access available to Members, impede the full utilisation of such access or disrupt trade under the ATC. One Member, nonetheless, [had] introduced far reaching changes in its rules of origin which have had the above effects. In particular, products previously exported as of [that Member's] origin now [fell] under the origin of the supplier country ... of the cloth from which such products [were] made, creating problems, in particular, with labelling and in respect of quotas where the cloth in question [was] subject to restriction in the Member that [had] effected the changes".

263. In reply to the TMB's request for information and comments, the United States stated that it believed that Article 4.4 of the ATC permitted rules of origin changes. While the United States generally did not view that there had been a "change" in the context of claims made by various countries, Article 4 of the ATC recognized that certain disruption may result from rules of origin changes, and laid out procedures on how to deal with such disruption. For example Article 4 stipulated that if changes were necessary, the country making the change should inform and, where possible, consult with the countries concerned in advance. In the case of issues raised about the US rules of origin, the alleged changes had been published more than two years before their implementation. The rules had been subject to public comment prior to their implementation, including from exporting countries that believed that they were somehow affected. Consultations had been held with a number of countries prior to the implementation of the rules. These consultations had largely resulted in mutually satisfactory conclusions. The United States had been available to consult with its trading partners on their concerns.

### C. COMMENTS BY THE TMB

264. On the basis of the overview included in paragraphs 254 to 262, it appears that, in the view of a number of Members, the changes implemented in the US rules of origin can have substantial implications on the implementation of certain particular provisions of the ATC. The TMB recalled in this regard the provisions of Article 4.2 that "the introduction of changes, such as changes in practices, rules, procedures and categorization of textile and clothing products, including those changes relating to the Harmonized System, in the implementation or administration of those restrictions notified or applied under this Agreement should not: upset the balance of rights and obligations between the Members concerned under this Agreement; adversely affect the access available to a Member; impede the full utilization of such access; or disrupt trade under this Agreement". The TMB also recalled the importance of following the procedures of Article 4.4, when such changes were necessary. The TMB noted that the United States remained available to consult with its trading partners on their concerns. The TMB took

note of the fact that the European Community, and the Members which had requested to join in consultations, had opted to have recourse, *inter alia*, to the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes and to Article XXII of GATT 1994.

#### D. INTEGRATION UNDER THE ATC OF PARTS OF A RESTRICTION

265. Article 4.3 provides that "if a product which constitutes only part of a restriction is notified for integration pursuant to the provisions of Article 2, Members agree that any change in the level of that restriction shall not upset the balance of rights and obligations between the Members concerned under this Agreement". When changes are necessary in this regard, the provisions of Article 4.4 apply (see paragraph 252 above). With respect to the first stage of integration Article 4.3 has not been of application, as no part of a restriction was included in the respective integration programmes. These particular provisions of the ATC seem to be more relevant for stage 2, as the United States notified that in some cases, the categories to be integrated were, prior to this integration, subject to a quantitative restriction, because, although the category itself was not under a specific limit, it fell under an aggregate or group limit (see paragraph 44). The TMB has received no indication from the Members concerned so far regarding the application of Article 4.3 and, if appropriate, Article 4.4 with respect to these cases.

### VII. IMPLEMENTATION OF THE PROVISIONS ON CIRCUMVENTION

266. Article 5 provides detailed rules and procedures for addressing problems arising from the potential circumvention of the ATC by transhipment, re-routing, false declaration concerning country or place of origin, fibre content, quantities, description or classification of merchandise and falsification of official documents. In essence, these provisions are based on a combination of the following elements:

- (a) Establishing the necessary legal provisions and/or administrative procedures to address and take action against circumvention by transhipment, re-routing, false declaration concerning country or place of origin, fibre content, quantities, description or classification of merchandise and falsification of official documents;
- (b) Agreeing to take necessary action, consistent with their domestic laws and procedures, to prevent, to investigate, and, where appropriate, to take legal and/or administrative action against circumvention practices within their territory;
- (c) Committing to cooperate fully, consistent with their domestic laws and procedures, to establish the relevant facts in instances of circumvention or alleged circumvention;
- (d) Should a Member believe that the ATC is being circumvented, it should consult with the Member(s) concerned with a view to seeking a mutually satisfactory solution; if such a solution is not reached, the matter may be referred to the TMB for recommendations by any of the Members involved;
- (e) Where, as a result of investigation, there is sufficient evidence that circumvention has occurred, appropriate action may be taken after consultations with a view to arriving at a mutually satisfactory solution between the Members concerned; any such action shall be notified to the TMB with full justification and the TMB may make such recommendations to the Members concerned as it deems appropriate;

if a mutually satisfactory solution is not reached, any Member may refer the matter to the TMB for prompt review and recommendations.

267. As noted in Chapter IV, the administrative arrangements concluded, respectively by the European Community and the United States with a great number of Members included provisions related to circumvention. In light of the explanations received the TMB noted that the European Community and the Members concerned had deemed it necessary to include provisions of the previous bilateral agreements in the administrative arrangements, including provisions on circumvention, which could have a potential effect on the implementation and administration of quantitative restrictions notified by the European Community pursuant to Article 2.1. As an overall conclusion of its review of the administrative arrangements notified by the European Community, the TMB expected that these arrangements, including the provisions on circumvention, would be implemented by the respective Members in conformity with the relevant provisions of the ATC (see paragraph 217).

268. With respect to the provisions on circumvention, contained in the administrative arrangements concluded and notified by the United States, the TMB sought information as to how such provisions were deemed necessary in relation to the implementation of any provision of Article 2 of the ATC. It also asked for explanations as to how these provisions, in particular that enabling the importing Member to impose, in particular circumstances, triple charges on quotas, would fit within the provisions of the ATC. In reply, the United States stated that circumvention often damages a country's legitimate trade by making it impossible to administer effectively its Article 2.1 quotas. The United States and the Members concerned deemed the circumvention provisions to be necessary for the implementation of these quotas. Triple charging, which was agreed upon in most of the administrative arrangements, had also been deemed by the United States and the respective Members to be a necessary deterrent to circumvention. Since its application would affect the restraint levels contained in the US' Article 2.1 notifications, these particular provisions were, in the view of the United States, appropriately included in the administrative arrangements.

269. Noting that all the provisions of the administrative arrangements, including those related to cooperation in the prevention of circumvention, had been agreed between the Members concerned, the TMB observed that Article 5 of the ATC contained detailed descriptions of the rules and procedures to be followed. The TMB noted, *inter alia*, that Article 5.4 of the ATC seemed to provide some flexibility in terms of remedies or agreed actions that could be foreseen in cases when circumvention has occurred. It observed, however, that Article 5 contained no reference to the possibility for the importing Member to impose triple charges on quotas, as a deterrent to circumvention. The TMB noted in this regard that this provision had not been utilized by the United States. The TMB recalled that the United States had stated that when provisions of the administrative arrangements were inconsistent with the ATC, the provisions of the ATC would apply. The TMB understood that this statement applied to each and every provision of the arrangements notified. The TMB expected, therefore, that all the provisions of these administrative arrangements, including those related to circumvention, would be implemented by the respective Members in conformity with the relevant provisions of the ATC (see paragraph 221).

270. As noted in paragraph 266 above, Article 5 of the ATC provides a Member with the possibility to refer the matter to the TMB for prompt review and recommendation, when a mutually satisfactory solution is not reached in bilateral consultations with respect to alleged circumvention.

271. The TMB received one such notification from Pakistan, in which Pakistan referred, under Articles 5.4 and 8.5, to debits made by the United States to Pakistan's quotas for US category 361 (bedsheets) on account of alleged circumvention by Pakistani companies. The TMB started to consider this notification at its meetings in February and March 1996, to which delegations from both Members participated. At its March meeting, the TMB was informed by the two delegations that, following consultations, a mutually satisfactory understanding had been reached between them, and that this understanding would be notified to the TMB (G/TMB/R/10 and 11). The TMB received a notification regarding this understanding from the United States in October 1996, but Pakistan requested, with the consent of the United States, that the TMB defer the consideration of this notification, as there was a possibility that the two Members would submit a joint notification to the TMB. On 24 July 1997 a communication was received from Pakistan on the same matter. The communications by both Members will be considered by the TMB at a subsequent meeting.

272. In the discussion of the Council for Trade in Goods in the Autumn of 1996, some Members expressed concern that the effective implementation of the ATC also depended on exporting Members adopting effective measures to prevent circumvention of the ATC. It was stated that transhipment, in particular, was a large and growing problem, much bigger than the amount of imports which had been subject to charge-back on quotas. Members had committed themselves in the ATC to establish the necessary mechanism regarding this problem and they should abide by this and commit themselves to closer cooperation in this area. In response, it was stated that the concerned Members continued to fully implement anti-circumvention measures. They had fully cooperated with their trading partners in combatting and redressing situations which might suggest the existence of circumvention. They reaffirmed their commitments to close cooperation but stated that recourse to the remedies provided for in the ATC was the proper course to follow. One of the main problems was the subjective manner in which the circumvention provisions were being interpreted and applied. The magnitude of the problem should not be exaggerated and the implementation of the ATC could not be made conditional on effective anti-circumvention measures.

273. The TMB noted that in the view of some Members, as expressed in the discussion held in the Council for Trade in Goods referred to above, circumvention and, in particular, transhipment, was a large and growing problem. However, the TMB observed that apart from the case of alleged circumvention mentioned in paragraph 271 above, no other case had been brought before the TMB pursuant to the provisions of Article 5 as of the date of adoption of this report.

## VIII. IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 7

### A. THE PROVISIONS OF ARTICLE 7

274. Article 7.1 states that "as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to: (a) achieve improved access to markets for textile and clothing products through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities; (b) ensure the application of policies relating to fair and equitable trading conditions as regards textiles and clothing in such areas as dumping and anti-dumping rules and procedures, subsidies and countervailing measures, and protection of intellectual property rights; and (c) avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons".

275. Article 7.2 requires Members to notify the TMB of such actions referred to in Article 7.1 "which have a bearing on the implementation of this Agreement". If these actions had been notified to other WTO bodies, a summary, with reference to the original notification, would be sufficient to fulfil the requirements under this provision. Any Member can make reverse notifications to the TMB in this regard.

276. Article 7.3 further provides that where any Member considers that another Member has not taken the required actions and that the balance of rights and obligations under the ATC has been upset, that Member may bring the matter before the relevant WTO bodies and inform the TMB. Any subsequent findings or conclusions by the WTO bodies are to form a part of the TMB's comprehensive reports on the implementation of the ATC during the respective stages of integration.

#### B. NOTIFICATIONS BY MEMBERS PURSUANT TO ARTICLE 7.2

277. No notifications or reverse notifications were received under this provision in 1995 and 1996. Towards the end of 1996 and in anticipation of the current report, the TMB discussed, *inter alia*, the availability of information pertaining to the application of GATT 1994 rules and disciplines in the context of Article 7 of the ATC. It requested the Secretariat to prepare a compilation of notifications received by certain WTO bodies, and of the relevant portions of their reports which would be relevant in the context of the preparation of this report. Further, the TMB decided to send to Members a reminder regarding notification requirements under some ATC provisions, recalling, *inter alia*, the notification provisions of Article 7.2.

278. Accordingly, a compilation of references to textiles and clothing in notifications to and reports on meetings of other WTO bodies was provided to TMB members and the reminder was sent to all WTO Members (G/TMB/11, dated 14 February 1997).

279. Responses to the reminders were provided by Colombia, Egypt, the European Community, India, Mauritius, New Zealand, Pakistan and Peru, some parts of which addressed issues related to Article 7. In their responses, Colombia, New Zealand and Peru provided, *inter alia*, information on their implementation of Article 7.1; Egypt noted with reference to Article 7.2 that it had not made any notifications relevant to textiles to other WTO bodies; the European Community expressed concern about the lack of implementation of the provisions contained in Article 7; India commented on the increasing resort to the initiation of anti-dumping procedures; Pakistan provided views on the impact of the integration programmes of the major importers on market access; and Mauritius noted that it had not made any reverse notifications pursuant to Article 7.2 to the TMB.

##### 1. Implementation of the Provisions Relating to Market Access (Article 7.1(a))

280. In response to the reminder and relevant to Article 7.1(a), Colombia stated that it had bound the 1,208 tariff items relating to products covered by the ATC, and had implemented its obligations maintaining tariffs at rates lower than the bound ones. In addition, it maintained no quantitative restrictions on imports and had no import licensing requirements. The European Community expressed concern that certain Members did not consider the obligation to achieve improved access to markets for textile and clothing products as an important part of the integration process, as set out in Article 7. Thus, according to the European Community, there was a concern that while the stages of integration would ensure the integration of the sector as far as the abolition of restrictions was concerned, certain Members would have done little or nothing to improve conditions for access to their own markets for imports. Some were in fact in the process of reducing that access. This effect could be observed, in the view of the European

Community, over a broad range of issues such as increases in tariff rates (either going beyond bound rates or not), the introduction of labelling and certification requirements, changes in the rules of origin and maintenance of balance-of-payments provisions affecting textiles and clothing. New Zealand commented on its textile policy, that quantitative restrictions had been removed for some time and import licensing requirements had also been removed for textiles in 1991 and clothing in 1992. Textile and clothing tariffs would be reduced by 50 per cent by the year 2000 when maximum textile tariffs would be 10 per cent and clothing tariffs 15 per cent. In addition, the specific tariffs on most items of children's clothing had been removed. New Zealand had decided not to retain the right to use the ATC safeguard mechanism. Pakistan expressed its concern that the integration schedules of the major importing countries were not resulting in enhanced market access and such "backloading" would cause problems in the final stages. Peru noted that it did not maintain any non-tariff barriers or import licensing systems while certificates of origin for certain fabrics applied only to products subject to anti-dumping and/or countervailing duties.

281. Also with reference to the provisions of Article 7.1(a), the TMB had noted in its 1996 report, prepared in the context of the Singapore Ministerial Conference (G/L/113, paragraph 99), the conclusions reached by the Committee on Market Access in April 1995. According to that Committee, in supervising the implementation of concessions relating to tariffs and non-tariff measures, the approach to be followed was to rely on cross- or reverse-notifications to identify problems that might arise out of the implementation of these concessions. From the information available to the TMB, no such cross- or reverse-notification had been submitted up to that date, or since then, to the Committee on Market Access.

282. As regards matters raised in, or notifications made to other WTO bodies, the TMB noted that, in March 1996, Korea expressed concern in the Committee on Market Access that Ecuador had increased tariffs on a wide range of textile products from Korea, Hong Kong and some non-WTO sources. The measures were applied in a selective manner to imports from some countries and the increased tariffs exceeded the bound ceiling level (G/MA/M/5). In November 1996, this matter (i.e. the reintroduction of the same measures for a further period) was also raised in the Council for Trade in Goods (G/C/M/16). In parallel, Korea referred this issue to the TMB (for details refer to paragraphs 166 to 170). Also in March 1996, the European Community had raised in the Committee on Market Access complaints from its industry that Argentina had been applying higher *ad valorem* rates for certain textiles, footwear and leather products than the bound specific duties (G/MA/M/5). This matter was also raised in the Council for Trade in Goods by the United States and Korea (G/C/M/11) (for details of subsequent actions taken by the European Community and the United States refer to paragraph 293 below). The TMB was also aware of a notification made to the Committee on Market Access by Indonesia (G/MA/SP/1) informing that Body of improvements in Indonesia's tariff concessions on textile and clothing products.

283. From notifications addressed to and reports adopted by other WTO bodies, the TMB understood that a number of Members had also reported measures to other bodies which may also be relevant in the context of the implementation of the ATC. India notified the Committee on Balance-of-Payments Restrictions, and informed the TMB, that, *inter alia*, the imports of several textile and clothing items, previously covered by quantitative restrictions in terms of GATT Article XVIII:B, had been liberalized in February 1995 with a number of fibres, yarns and industrial fabrics permitted to be imported freely by all persons without an import licence and a number of fabrics, made-ups and garments permitted to be imported against special import licence (WT/BOP/N/11 and Corr.1; WT/BOP/N/24). According to notifications to the Committee on Balance-of-Payments Restrictions, Nigeria had taken steps to liberalize its import regime by, *inter alia*, removing textiles from the import prohibition list (WT/BOP/R/25); Pakistan had notified a

list of products, including products covered by the ATC, on which import restrictions were applied for balance-of-payment reasons (WT/BOP/N/14) and had referred to the elimination of certain products from its Negative List, with the imports of most textile items being allowed as from 1994-1995 (WT/BOP/15, paragraph 61); Poland's comprehensive import surcharge regime, introduced prior to the entry into force of the WTO Agreement, had been progressively reduced at the beginning of 1995 and 1996 and was eliminated by 31 December 1996 (WT/BOP/N/16); Tunisia had reported that the list of products subject to import restriction (List B) had been shortened in November 1995 by eliminating made-up textile products (WT/BOP/15). The Slovak Republic had notified the Committee that its import surcharge on consumer goods and foodstuffs (implemented as from March 1994) would be reduced in 1996 and removed on 1 January 1997 (WT/BOP/N/15). Subsequently, in June 1997, the Slovak Republic submitted a notification to the same Committee regarding the introduction of an import deposit scheme, covering also a number of ATC products. The Czech Republic had also notified an import deposit scheme which also covered a number of ATC products. Hungary undertook to progressively reduce its import surcharge measure, introduced in March 1995, beginning on 1 January 1997, with full elimination of the measure as of 1 July 1997 (WT/BOP/R/17 and WT/BOP/N/26). Bulgaria notified in March 1997 the application of a comprehensive import surcharge regime.

284. South Africa had notified that it had carried out a progressive phase out of its import surcharge measure and finally abolished it on 1 October 1995. Turkey also progressively reduced its exceeded bindings to the bound rates as of 1 January 1997 and thereby disinvoked GATT Article XVIII:B on that date (WT/BOP/N/22).

285. A number of Members provided notifications to the Committee on Import Licensing which contained specific references to textiles and clothing. The European Community notified, *inter alia*, the licensing procedures for imports of textile products; in 1995, Cyprus provided lists of products subject to import licensing and to quantitative restrictions, including both textile and clothing products. Subsequently, in 1996, in a revised notification, only fishing nets remained subject to import licensing. Malta listed its textile products subject to licenses while Japan did the same for silk products. Hong Kong reported its surveillance procedures which served as a back-up for its export control system. Hungary explained that its system of import licensing was used in the context of its global quota for consumer goods and Norway reported that licenses were required for textile and clothing products subject to quotas under the ATC and for some other textile products for surveillance purposes. The Philippines required licenses to import used or new rags, twine, etc. Slovenia reported that licenses were required for certain textile and clothing products which were subject to quantitative restrictions.

286. The TMB also was aware of 21 notifications relating to textile and clothing products to the Committee on Technical Barriers to Trade by ten WTO Members (the Czech Republic, the European Community, Finland, Germany, India, Japan, Korea, Mexico, the Slovak Republic and the United States). Eighteen of these notifications provided information on standards for testing or certification for textile or clothing products, two referred to labelling requirements and one to changes in rules of origin. The Body also observed that information had been provided to Members through submissions to the Committee on Regional Trade Arrangements on the implementation of provisions relating to textiles and clothing trade in several customs unions and free-trade areas.

2. Implementation of the Provisions of Article 7.1(b)

287. In response to the TMB's request for information (paragraph 278 above), one Member (Colombia) stated that it had not used anti-dumping or countervailing measures in the textiles and

clothing sector. In addition, another Member (India) noted the increasing resort to the initiation of anti-dumping procedures, used, in its view, in a protectionist way. In some cases new actions were being initiated shortly after the termination of earlier ones. It was considered that anti-dumping measures could be "far more potent" than quota restraints. The concern was expressed that anti-dumping actions would replace the quotas, thus neutralizing the impact of the removal of the quantitative restraints. Also in reply to the TMB's request for information, another Member (the European Community) stated that it operated the anti-dumping instrument within a narrowly-defined legislative framework, which was in line with its WTO commitments and ensured a fair and transparent procedure.

288. Apart from the observations referred to in paragraph 287, the TMB received no notifications referring to specific actions taken within the areas of the WTO referred to in Article 7.1(b) and no references to notifications made elsewhere in terms of Article 7.2. Members' semi-annual reports to the Committee on Anti-Dumping Practices revealed, however, a number of anti-dumping measures involving textile and clothing products. In total, 12 Members (Argentina, Brazil, Canada, the European Community, Japan, Korea, Mexico, New Zealand, the Philippines, South Africa, Turkey and the United States) had introduced or continued to maintain anti-dumping actions on one or more textile and clothing products. These measures affected 15 exporting Members (Bangladesh, Brazil, Egypt, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Pakistan, Portugal, Romania, Thailand, Turkey and the United States).

289. Concerns had also been expressed by several Members that the closure and subsequent rapid reopening of anti-dumping proceedings could lead to systematic "trade harassment" over several years until such time as the investigating authorities were in a position to prove the allegations made (see the discussions on the "Statement by Indonesia on Selected European Union (EU) Anti-Dumping Practices", supported by Hong Kong, India, Japan, Korea and Malaysia speaking on behalf of the ASEAN countries, in October 1996 in the Committee on Anti-Dumping Practices relating to proceedings by the European Community in respect of certain cotton fabrics from several Members: G/ADP/M/9). In response, the Member responsible for the proceedings (EC) had stated, *inter alia*, that the provisions of the Anti-Dumping Agreement had been met, and had invited a clear statement whether there was any suggestion of a breach of the Anti-Dumping Agreement or the General Agreement.

290. Four Members (Argentina, Cote d'Ivoire, the European Community and the United States) had provided notifications to the Committee on Subsidies and Countervailing Measures describing measures taken which had specific reference to the sectors of textiles and clothing (initiation, provisional/final measures, termination/case withdrawal). These involved ten exporting Members (Argentina, Bangladesh, Brazil, India, Mexico, Pakistan, Peru, Sweden, Thailand and Turkey). In addition, a number of Members notified a range of programmes to promote general assistance to their industries (research and development, marketing, education, etc.) which would be available either specifically or among others to their textile and clothing industries.

291. In the Council for Trade-Related Aspects of Intellectual Property Rights, a number of Members took the opportunity to pose questions during the review of legislations on trademarks, geographical indications and industrial designs on other Member's measures to protect textile designs. Subsequently, the responses to these questions were reproduced in working documents of that Council.

### 3. Implementation of the Provisions of Article 7.1(c)

292. No notification was addressed to the TMB regarding the implementation of the provisions contained in Article 7.1(c). On the basis of information available to it, the TMB was not aware of

any failure to comply with the obligation to avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons.

C. ISSUES BROUGHT TO THE ATTENTION OF THE TMB PURSUANT TO ARTICLE 7.3

293. The TMB was informed of actions instituted by the European Community and the United States in respect of certain measures taken by Argentina regarding textiles, clothing and footwear products. In October 1996, the United States had requested consultations with Argentina pursuant to Article 4 of the DSU, Article XXII:1 of GATT 1994 as well as provisions of the TBT Agreement, the Agreement on the Implementation of Article VII of GATT 1994 and the ATC, regarding measures implemented by Argentina affecting, *inter alia*, textile and clothing imports. These measures included, according to the US' request, the imposition of specific duties in excess of the bound *ad valorem* rate, and imposition of an *ad valorem* statistical tax. The European Community and Hungary requested to join in these consultations. In January 1997, the United States requested that a panel be established and this was done in February 1997 (WT/DS56/- series). In April 1997, the European Community also requested consultations with Argentina on this matter, citing Article 4 of the DSU, Article XXII:1 of GATT 1994, the TBT Agreement and the ATC, referring in particular to problems arising from the imposition of specific duties in excess of the bound rates and also to labelling requirements. The United States requested to join in these consultations (WT/DS77/- series).

D. WTO MEMBERS COMMENTS ON COMPLIANCE WITH REQUIREMENTS OF ARTICLE 7 OF THE ATC

294. In the Council for Trade in Goods, in the context of a discussion on the implementation of the ATC, certain Members raised the question of the compliance with the provisions of its Article 7 (G/L/134, paragraphs 16.30 to 16.33).

295. In this discussion, some Members "stated that an important element of the ATC was increased opening of the textiles markets of all WTO Members. ... Concerns were expressed that some exporting Members had not complied with their obligations under Article 7. In examining the extent to which the commitment to achieve improved access to markets had been complied with, attention should also be paid to any instances where *de facto* market access had been reduced through the raising of applied tariff rates, in addition to the reduction or elimination of non-tariff barriers. One Member had invited exporting Members to make it clear in what way they would be prepared to give effect to this commitment. A trade-off for the progressive liberalization of restraints by importing Members was the removal of various impediments to textile imports by exporting Members".

296. Another view, in response to the foregoing, was that "... the Uruguay Round results constituted a total package with a general equilibrium between rights and obligations for all Members. Benefits given to certain Members in the ATC through progressive integration of the textile and clothing trade into the ATC were trade-offs for the obligations these Members had undertaken in other Agreements. Besides, Article 7 explicitly referred to 'specific commitments undertaken by Members as a result of the Uruguay Round' and therefore there was no obligation on the part of any Member to provide additional market access over and above the commitments already included in its Schedule of Commitments. International trade could not be conducted on a basis of sectoral reciprocity. There had been notifications expressing appreciation to certain exporting Members for having provided effective access in their markets for textile and clothing products. No provisions in the ATC required that the integration be conditional on the removal of impediments to textile imports by exporting Members. The approach undertaken by importing

Members at offering more meaningful integration in exchange for greater market access in exporting Members was not justified. The suggestion that attention should also be paid to increased applied tariff rates was rejected because the multilateral trading system had, as its cornerstone, the concept of bindings of tariffs. It was the right of any Member to apply any rates so long as these were within the bound levels in its schedule. Applied rates could fluctuate depending on the revenue and development needs of Members".

E. COMMENTS BY THE TMB

297. While noting the concerns expressed by some Members in this regard (see paragraphs 280 and 295 above), the information submitted or available to the TMB suggests that, apart from the issues raised in the Council for Trade in Goods and in the Market Access Committee (see paragraph 282 above), the implementation of specific market access commitments undertaken as a result of the Uruguay Round and affecting the products covered by the ATC has not given rise to particular problems.

298. As to the "maintenance of balance-of-payment provisions affecting textiles and clothing" and the increases in tariff rates beyond the bound rates, as raised by a Member in its response to the TMB, the TMB observed that these issues were dealt with in other appropriate WTO bodies, under the relevant provisions of GATT 1994.

299. The TMB also noted the concerns expressed in the Committee on Anti-Dumping Practices as well as those formulated by one Member in its communication to the TMB regarding the use of anti-dumping procedures and their potential effects. It recalled that taking such actions as may be necessary to abide by GATT 1994 rules and disciplines, so as to ensure the application of policies relating to fair and equitable trading conditions as regards textiles and clothing in the area of dumping and anti-dumping rules and procedures, as referred to in Article 7.1(b), is an obligation to be respected by all Members. The TMB observed that no notification or reverse notification indicating a bearing of such measures on the implementation of the ATC had been addressed to it pursuant to Article 7.2. It also observed that the consistency or otherwise of measures with the relevant provisions of GATT 1994 and/or the applicable Uruguay Round Agreements, is a matter which may be brought before the relevant WTO bodies, in which case the TMB shall be informed accordingly.

300. The TMB observed furthermore that the compliance of Members with the notification requirements of Article 7.2 had not been satisfactory. The TMB expressed the hope that progress would be achieved in this regard in the upcoming period.

**IX. IMPLEMENTATION OF PARTICULAR PROVISIONS IN THE ATC RELATED TO SPECIAL INTERESTS OF CERTAIN WTO MEMBERS**

A. LEAST-DEVELOPED COUNTRY MEMBERS

301. The provisions of the ATC explicitly mentioning the least-developed country Members can be summarized, as follows:

- (a) The third preambular paragraph recalls that "it was agreed that special treatment should be accorded to least-developed country Members";
- (b) A footnote to Article 1.2 specifies that to the extent possible, exports from least-developed country Members may also benefit from this provision.

(According to Article 1.2, the provisions of Article 2.18 (improved access for small suppliers) and 6.6(b) (differential and more favourable treatment in the fixing of the economic terms of restraint agreed pursuant to Article 6) should be used in such a manner as to permit meaningful increases in access possibilities for small suppliers and the development of commercially significant trading opportunities for new entrants in the field of textiles and clothing trade);

- (c) Article 6.6(a) provides that in the application of the transitional safeguard, least-developed country Members shall be accorded treatment significantly more favourable than that provided to the other groups of Members referred to in the same Article, preferably in all its elements, but at least, on overall terms.

302. As to the implementation of the provisions detailed in paragraph 301, the following observations can be made:

1. Articles 6.6(a) and 6.6(b)

303. Since no safeguard action has been notified by any Member on imports from any least-developed country Member during the period under review, this paragraph, therefore, has not been applied.

2. Article 2.18

304. To the extent that least-developed country Members are concerned by the implementation of this provision, the TMB has noted that only Canada and the United States had notified restrictions under Article 2.1 *vis-à-vis* least-developed country Members, and that:

- (a) Canada notified restrictions on imports from Bangladesh, Lesotho, and Myanmar. Improvement in access in the sense of Article 2.18 was provided with respect to exports from Lesotho and Myanmar through the advancement by one stage of the growth rates set out in Article 2.13;
- (b) The United States notified restrictions on imports from Bangladesh, Haiti and Myanmar. Improvement in access in the sense of Article 2.18 was provided with respect to exports from Haiti through the advancement by one stage of growth rates set out in Article 2.13.

305. In the discussion of the Council for Trade in Goods on issues related to the implementation of the ATC, it was recalled that the ATC provided that, to the extent possible, exports from a least-developed country Member might also benefit from the provisions of Article 2.18 (concerning improved growth in quota levels) so as to permit meaningful increases in access possibilities for such Members. Provisions on special treatment of LDCs had also been provided in the preamble, in the footnote to Article 1.2 and in Article 6.6(a). These provisions did not specify the precise modalities for according such treatment, but one way might be to review the quotas in place, including more favourable growth rates. In the Marrakesh Declaration, Ministers had recognized the importance of the implementation of special provisions for the LDCs and had declared their intention to continue to assist and facilitate the expansion of their trade and investment opportunities. They had agreed to keep under regular review by the Ministerial Conference and the appropriate bodies of the WTO the impact of the results of the Uruguay Round on the LDCs with a view to fostering positive measures to enable them to achieve their development objectives. Positive measures were required to stop the further marginalization

of LDCs, whose integration into the global trading system would be in the interest of all WTO Members.

306. In response, it was stated that Members were abiding now and would continue to abide by the best endeavour provisions in favour of LDCs. One Member added that although it maintained restraints on certain textile exports of an LDC Member, that Member, although being a very large supplier, had unusually free access and benefitted from initial quota growth rates in excess of 8 per cent. Another Member added that it had no restraints on LDCs and that it applied zero tariffs. This position was kept under review with a view to examining whether the relaxation of the GSP system would be possible to further benefit textile exports from certain LDC Members and non-Members (G/L/134, paragraphs 16.18 and 16.19).

307. The TMB noted that the comprehensive and integrated WTO plan of action for the least-developed countries adopted by the Ministerial Conference in Singapore on 13 December 1997 states, *inter alia*, that "WTO Members should endeavour to make use, when possible, of the relevant provisions of the Agreement on Textiles and Clothing to increase market access opportunities for least-developed countries" (WT/MIN(96)/14).

308. The TMB recalls the particular importance of a full and faithful implementation of the provisions of the ATC in favour of least-developed country Members, as well as the relevant provisions of the plan of action for the least-developed countries, and invites Members to examine the possibilities for providing, whenever possible, substantially increased market access opportunities for the textile and clothing products of the least-developed country Members. In such cases the TMB expects that it will be notified accordingly.

#### B. SMALL SUPPLIERS AND NEW ENTRANTS

309. Article 2.18 of the ATC is primarily intended to provide improvement in access to exports of a specific group of countries, as defined in the Article itself (i.e. Members whose restrictions represent 1.2 per cent or less of the total volume of the restrictions applied by an importing Member as of 31 December 1991 and notified under Article 2). (For the implementation of Article 2.18, see Chapter IV, paragraphs 206 to 213.)

310. Article 6.6(b) provides that, if a safeguard measure is taken on imports from Members whose total volume of textile and clothing exports is small in comparison with the total volume of exports of other Members and who account for only a small percentage of total imports of that product into the importing Member, differential and more favourable treatment shall be accorded in fixing the level of the restraint, its growth rate and the applicable flexibility provisions. The Members corresponding to this definition are not necessarily the same as the Members envisaged in Article 2.18. The TMB received no information as to whether or not the Members with respect to which the United States and Brazil had introduced restrictions under Article 6 fell within the definition in Article 6.6(b), and whether, consequently, the provisions of Article 6.6(b) had been implemented. The TMB observed, however, that the Members with respect to which Brazil had introduced safeguard measures did not seem to fall within this definition.

311. In the discussion of the Council for Trade in Goods on issues related to the implementation of the ATC, it was recalled that, according to Article 1.2, meaningful increases in access possibilities must be provided for small suppliers, using the provisions of Articles 2.18 and 6.6(b). Concern was expressed that the only way to determine if the provisions were being complied with was to receive notifications from Members imposing or maintaining restrictions, indicating the way in which "meaningful increases" in access possibilities were being

implemented. In response it was stated that the Members were abiding now and would continue to abide by their obligations to small suppliers (G/L/134, paragraphs 16.16 and 16.17).

C. COTTON-PRODUCING EXPORTING MEMBERS

312. Article 1.4 provides that "the particular interests of the cotton-producing exporting Members should, in consultation with them, be reflected in the implementation of the provisions of this Agreement".

313. In the discussion of the Council for Trade in Goods on issues related to the implementation of the ATC, some Members pointed out in this regard, that as was clear from the wording of Article 1.4, the onus of consultations was on the importing Member integrating products into GATT 1994. Concern was expressed that no such consultation had been notified, nor held. The TMB had received no notifications relating to the implementation of this provision. It was further stated that it should have sought information from Members concerned. Therefore, the requirements of this provision had not been fulfilled and the particular interests of the cotton-producing exporting Members had not been reflected in the implementation of the provisions of the ATC. In response, some other Members stated that this provision had been faithfully implemented. No specific consultations had been requested from any Member with respect to this provision. Some Members had held consultations with a number of countries which they considered to be relevant to Article 1.4. There was no obligation to notify the TMB and no Member had taken this issue to the TMB (G/L/134, paragraphs 16.20 and 16.21).

314. In reply to the TMB's request for information regarding the implementation of particular provisions of the ATC, including its Article 1.4, one Member stated that the TMB should pay due attention as mandated in Article 1.4, in reflecting the particular interests of the cotton-producing exporting Members in the implementation of the provisions of the ATC, including the review of the first stage of integration. In the view of another Member, the major importing countries had not allowed any special concessions to cotton-producing and exporting countries, which would have been in conformity with the letter and spirit of the ATC. On the contrary, certain non-cotton producing countries had been provided free market access in countries like the European Community for categories in which they competed with that Member. The result was that they had a larger access to the importing countries than the countries which were facing quantitative restrictions. Whereas the justification for such treatment was on the basis of these countries being LDCs, the whole justification of maintaining stringent quantitative restrictions on the competition needed to be reassessed.

315. In reply to additional specific questions posed by the TMB, one Member (Canada) stated that it had held consultations with exporting countries in 1990 to 1993, prior to the notification by Canada of the restrictions pursuant to Article 2.1, consultations during which cotton-producing exporting countries had ample opportunity to raise issues and concerns as well as their particular interests. As a result of these consultations, a number of improvements had been made to existing restraints in order to accommodate exporters' requests. It should be noted that Canada's restraint category structure, with few exceptions, did not differentiate products according to fibre type. In most cases where cotton-specific products were restrained, the affected Members did not appear to be cotton-producing exporting countries. The bulk of imports of the category liberalized as a result of Canada's first stage of integration were cotton products, and more than half of the imports of tailored-collar shirts<sup>20</sup> were also cotton products. Canada remained willing to listen and discuss the particular interests of the cotton-producing exporting Members and, should particular

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<sup>20</sup>See paragraph 41 above.

interests be made known, would be prepared to consult with the interested Members. Another Member (the European Community) had stated that prior to the entry into force of the ATC, and also as a part of its determination of its second stage of integration, it had held consultations with cotton-producing exporting Members, during which no particular concern or factor had been expressed regarding the implementation by the European Community of the provisions of the Agreement, in particular Article 1.4; no further consultations were sought concerning this provision. The position expressed by one Member that certain non-cotton producing countries had been provided free market access in countries like the European Community for categories in which they competed with that Member was a result of the restrictions existing prior to the entry into force of the ATC, not from any perceived discrimination between cotton-producing and non-cotton producing countries. A third Member (Norway) stated that during the consultation process that had preceded the entry into force of the ATC, and through a process of bilateral consultations, a number of bilateral restrictions had been rescinded, and the provisions for growth and flexibility improved, to the benefit of the exporting countries. In addition, the limitations on the combined use of carryover, carry forward and swing had also been removed. In particular, consultations were held in 1994 with one cotton-producing exporting country regarding knitted bed linen, of which that country was an important supplier of the cotton products to Norway. As a result of these consultations, the restraint on knitted bed linen had been removed. Further liberalization had been pursued by Norway after the establishment of the WTO. Prior to the elimination of restrictions made pursuant to Article 2.15 (see Chapter IV), Norway consulted with all WTO Members subject to restrictions. A fourth Member (the United States) stated that both before and after the entry into force of the ATC it had held numerous consultations with cotton-producing exporting countries. The United States took its obligations seriously under Article 1.4 and this had constituted the background against which these consultations had been concluded. At no time in any of these consultations had any party felt it necessary to directly invoke Article 1.4. The United States was willing to enter into consultations with any cotton producing country that wished to raise an issue pursuant to this Article.

316. On the basis of the above, it appears to the TMB that Members have different perceptions on how the particular interests of the cotton-producing exporting Members should be - and were - reflected in the implementation of the provisions of the ATC. The TMB notes in this respect that the Members maintaining restrictions under Article 2 had stated that they were prepared to have consultations on this matter with the Members concerned. The TMB encourages interested Members to enter into consultations with a view to clarifying the issues related to the implementation of Article 1.4. The TMB also recalls in this regard that, should the need arise, the provisions of Article 8.4 are available for this purpose.

#### D. WOOL-PRODUCING EXPORTING MEMBERS

317. The only explicit provision in the ATC referring to wool-producing developing country Members is Article 6.6(c), which provides that "with respect to wool products from wool-producing developing country Members whose economy and textiles and clothing trade are dependent on the wool sector, whose total textile and clothing exports consist almost exclusively of wool products, and whose volume of textiles and clothing trade is comparatively small in the markets of the importing Members, special consideration shall be given to the export needs of such Members when considering quota levels, growth rates and flexibility". No safeguard action has been notified under Article 6 on exports of wool products from wool-producing developing country Members whose economy and textile and clothing trade are dependant on the wool sector, whose textile and clothing exports consist almost exclusively of wool products, and whose volume of textile and clothing trade is comparatively small in the markets of the importing Members. This provision has, therefore, not been of application.

E. MORE FAVOURABLE TREATMENT TO BE ACCORDED TO RE-IMPORTS IN CASE OF RECOURSE TO THE PROVISIONS OF ARTICLE 6

318. Article 6.6(d) states that "more favourable treatment shall be accorded to re-imports by a Member of textile and clothing products which that Member has exported to another Member for processing and subsequent reimportation, as defined by the laws and practices of the importing Member, and subject to satisfactory control and certification procedures, when these products are imported from a Member for which this type of trade represents a significant proportion of its total exports of textiles and clothing".

319. In reviewing the restraints agreed pursuant to Article 6.9 between the United States and the Dominican Republic, Honduras, El Salvador, Colombia (imports of cotton and man-made fibre underwear), Honduras (imports of women's and girls' wool coats), and Guatemala (cotton and man-made fibre skirts), the TMB noted that more favourable treatment had been provided to the products envisaged in paragraph 6.6(d). This took the form of guaranteed access levels (GALs), i.e. quantities of products of a category that a Member can export to the United States provided the actual product shipped qualifies for such treatment, *inter alia*, by being made of "US components". When reviewing such agreed restraints, the TMB observed that, except for Colombia, no growth rate had been provided for with respect to GALs. However, according to indications given by the US Government, GALs could be increased on request. Therefore, it was the TMB's understanding that, upon request, the GALs would be increased by no less than 6 per cent annually (except for the wool coats, where the GAL should be increased by no less than 2 per cent annually).

320. The TMB noted, however, that according to the Panel Report on US restrictions on cotton and man-made fibre underwear against imports from Costa Rica, adopted by the Dispute Settlement Body (see paragraph 96), the United States had violated its obligations under Article 6.6(d) of the ATC, as the restriction imposed on Costa Rican imports was identical to the level required under Article 6.8 and did not make allowances for reimports in a quantitative or any other way.

F. SPECIAL TREATMENT AFFORDED TO MEMBERS WHICH WERE NOT MEMBERS OF THE MULTIFIBRE ARRANGEMENT (MFA)

321. Article 1.3 states that "Members shall have due regard to the situation of those Members which have not accepted the Protocols extending ... the MFA since 1986 and, to the extent possible, shall afford them special treatment in applying the provisions of this Agreement". The TMB received no information on the extent to which recourse was made to this provision of the ATC. It can be noted, however, that no action has been initiated pursuant to Article 6 against imports of any Member falling under Article 1.3.

G. SPECIAL PROVISIONS IN FAVOUR OF DEVELOPING COUNTRY MEMBERS

322. The brief overview provided in the previous sections of this Chapter also indicates that some of the provisions of the ATC refer to a particular category of Members. Apart from the provisions related explicitly to the least-developing country Members, Members qualifying for the status of small suppliers and new entrants were mostly developing countries/territories. The same applies to the application of the subparagraphs under Article 6.6. Another provision which is applicable only to developing countries is paragraph 3(a) of the Annex to the ATC. This paragraph provides that actions under the transitional safeguard provisions in Article 6 of the ATC shall not apply to developing country Member's exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional

folklore handicraft textile and clothing products, provided that such products are properly certified under arrangements established between the Members concerned. In accordance with this provision no safeguard action under Article 6 was introduced on such products.

323. The TMB reiterated that, in addition to the provisions specifically designed to provide favourable treatment to exports of textile and clothing products from developing country and/or least-developed country Members, and in addition to the Articles already mentioned in this Chapter, there are several other provisions in the ATC which, although not specifically applicable only to such Members, could be applied in such a way as to provide favourable treatment, or to be beneficial, *inter alia*, to them. Such provisions include, among others, those related to the integration process (Articles 2.6, 2.7, 2.8 and 2.10), provisions regarding growth rates (Articles 2.13 and 2.14), elimination of quantitative restrictions (Article 2.15), phasing out of non-MFA restrictions (Article 3.2), changes (i.e. reductions) in existing restrictions (Article 3.3), improved access to markets and the application of policies relating to fair and equitable trading conditions (Article 7.1) (G/L/113; WT/COMTD/W/17).

## X. COMPLIANCE WITH NOTIFICATION REQUIREMENTS UNDER THE ATC

324. The ATC contains a broad range of notification requirements to be complied with by the Members. Most of these notification obligations are time-bound, some others are *ad hoc* in nature.

325. In order to provide assistance, in particular to developing country and least-developed country Members, the WTO Secretariat issued a Technical Cooperation Handbook on Notification Requirements. The handbook consists of self-contained sections - one per agreement - and the first set of these sections, including, *inter alia*, that related to the ATC (WT/TC/NOTIF/TEX/1), was published in August 1996.

326. In its report adopted and submitted to the Council for Trade in Goods, in the context of the preparation of the Singapore Ministerial Conference, the TMB stated the following:

"The implementation of the ATC cannot be monitored fully unless Members comply with its notification requirements. In this respect, the overall picture is a mixed one. On the one hand, the Members accounting for the majority of international trade in textiles and clothing under the ATC complied with the essential notification requirements of the ATC. A number of notifications have, however, been addressed to the TMB after the respective deadlines foreseen. In this respect the TMB observed that its taking note of late notifications was without prejudice to the legal status of such notifications. On the other hand, ... the TMB noted with concern that an important number of Members had not provided any notification. The TMB observed that the Secretariat had sent reminders to Members on their notification obligations. The TMB expressed its serious concern that the absence of notifications or their late submission may have implications for the implementation of the ATC." (G/L/113)

327. As recommended by the TMB, the Council for Trade in Goods took note of the above observations and concerns and recalled to Members the particular importance of strictly adhering to the notification requirements under the ATC (G/C/M/14, paragraph 5.35).

328. In the context of the preparation for the present report, the TMB issued, in February and in April 1997, a request for information to WTO Members, reminding them also of some

notification obligations contained in the ATC (G/TMB/11). The TMB received replies from eight Members.

329. It has to be observed that adherence to the notification obligations has not improved over time. While 49 Members submitted notifications pursuant to Articles 2.6 and 2.7, by 24 July 1997 (more than six months after the expiration of the relevant deadline) only 40 Members had notified their second stage integration programme. In addition, there has been an increase in the number of late notifications. This is regrettable as the non-compliance with notification requirements, including the deadlines, may have serious implications on the implementation of the ATC and on Members' rights and obligations arising therefrom.

330. The TMB suggests that the Council for Trade in Goods recall to Members the particular importance, both legally and for transparency purposes, of strict compliance with the notification requirements of the ATC.

## **XI. FUNCTIONING OF AND WORK CARRIED OUT BY THE TMB**

331. According to Article 8.1, the TMB was established in order to supervise the implementation of the ATC, to examine all measures taken under its provisions and their conformity therewith, and to take the actions specifically required of it by the ATC.

332. The composition of the TMB for the first stage of implementation of the ATC (1995 to 1997) was decided by the General Council on 31 January 1995 (WT/L/26) and subsequently modified by the General Council on 6 February 1996 (WT/L/26/Add.1). Ambassador András Szepesi was appointed Chairman of the TMB for the same period by the General Council on 31 January 1995 (WT/GC/M/1). The list of TMB members, alternates, observers, and successive changes, are contained in the reports of the TMB.

### **A. WORKING PROCEDURES**

333. The TMB devoted seven formal and several informal sessions of its first meeting to the elaboration and adoption of its working procedures pursuant to Article 8.2 (G/TMB/R/1).

### **B. DISCHARGING FUNCTIONS ON AN AD PERSONAM BASIS**

#### **1. TMB Working Procedures**

334. Article 8.1 of the ATC states that TMB members discharge their function on an *ad personam* basis. The working procedures adopted by the TMB specify that "in discharging their functions ... , TMB members and alternates undertake not to solicit, accept or act upon instructions from governments, nor to be influenced by any other organisations or undue extraneous factors. They shall disclose to the Chairman any information that they may consider likely to impede their capacity to discharge their functions on an *ad personam* basis. Should serious doubts arise during the deliberations of the TMB regarding the ability of a TMB member to act on an *ad personam* basis, they shall be communicated to the Chairman. The Chairman shall deal with the particular matter as necessary".

#### **2. Decision of the Council for Trade in Goods**

335. When adopting its working procedures, the TMB invited its Chairman to submit to the Council for Trade in Goods the following for appropriate action: "WTO Members which,

pursuant to the decision of the General Council of 31 January 1995, appoint TMB members under Article 8.1 of the Agreement on Textiles and Clothing accept that TMB members serve in their *ad personam* basis and not as government representatives. Consequently, they shall not give TMB members instructions, nor seek to influence them, with regard to matters before the TMB. The same applies to alternates.” This proposal was transmitted to the Council for Trade in Goods in July 1995.

336. In the context of its annual report to the Council for Trade in Goods (G/L/113, paragraph 107), the TMB requested the Council to take appropriate action on this proposal. On 12 February 1997, the Council for Trade in Goods, following consultations held by its Chairman, adopted a decision on the *ad personam* status of TMB members, as follows: “WTO Members which, pursuant to the decision of the General Council of 31 January 1995, appoint TMB members under Article 8.1 of the Agreement on Textiles and Clothing accept that TMB members discharge their function on an *ad personam* basis and not as government representatives. Consequently, they shall not give TMB members instructions, nor seek to influence them, with regard to matters before the TMB. The same applies to alternates” (G/C/W/20/Rev.1).

3. Code of Conduct Adopted by the Dispute Settlement Body

337. 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 (WT/DSB/RC/1), in view of the fact that such Rules apply, *inter alia*, to the Chairman of the TMB and other members of the TMB secretariat called upon to assist the TMB in formulating recommendations, findings or observations pursuant to the ATC, as well as, to the extent prescribed in the relevant Section of the Rules, to members of the TMB (G/TMB/R/22, paragraph 17).

C. CIRCULATION OF REPORTS AND NOTIFICATIONS; DERESTRICTION OF DOCUMENTS

1. Circulation of Reports

338. The TMB adopted reports of its meetings, which were circulated to WTO Members for their information (G/TMB/R/1 to 33). The TMB adopts such reports at the subsequent meeting at the latest, on the basis of a draft proposed by the TMB secretariat incorporating the text of any recommendation, finding and observation by the TMB; these texts themselves have already been adopted by the TMB. The TMB’s reports are, therefore, normally circulated to WTO Members more than a month after each meeting of the TMB. The TMB felt that this time-lag was too long. It, therefore, authorized its Chairman on several instances, in particular when the TMB had reviewed dispute cases between WTO Members, to issue a note forwarding information on the TMB’s recommendations, findings and observations to WTO Members (G/TMB/1 to 10, and 12).

339. The General Council decided at its meeting on 15 November 1995 on procedures to be followed by the relevant WTO bodies for an annual overview of WTO activities and for reporting under the WTO (WT/L/105). Pursuant to this decision, the first annual report of the TMB was submitted in November 1995 and is contained in document G/L/40. The second annual report was submitted in October 1996, also in the context of the reporting procedures for the Singapore Ministerial Conference (WT/L/145), and is contained in document G/L/113.

2. Circulation of Notifications

340. In conformity with its working procedures (G/TMB/R/1 and 11), notifications received by the TMB pursuant to Articles 2.1, 2.2, 2.7(a) and (b), 2.8(a) and (b), 2.10, 2.11, 2.15, 3.1, 3.3, 3.4, 6.1 and 7.2 of the Agreement have been circulated to WTO Members without delay, it being understood that the TMB may examine or review these notifications at a later stage. Notifications addressed to the TMB for review other than those above were, after such review, transmitted to WTO Members.

3. Derestriction

341. Following the decision adopted by the General Council at its meeting on 18 July 1996, the TMB considered the question of the derestriction of its working documents (G/TMB/W/- and G/TMB/SPEC/- series). The TMB recalled that in adopting its own working procedures on 13 July 1995 it had agreed that it would " ... decide on the implementation of the decision of the General Council on derestriction of documents when the General Council has adopted its decision on this matter" (G/TMB/R/1). The TMB took note of the General Council's decision and decided that it would act in full compliance with it (G/TMB/R/16).

D. WORKLOAD; NUMBER OF MEETINGS, SCHEDULING OF MEETINGS

342. Until the end of July 1997, the TMB had held 35 meetings totalling overall 129 working days. It had completed its review of seven safeguard measures introduced pursuant to Article 6.10, as well as two safeguard measures imposed under Article 6.11. The TMB also reviewed six matters referred to the TMB under Article 8, for which it had invited participation of the Members concerned, in accordance with its working procedures. It further reviewed nine restraint measures agreed and notified pursuant to Article 6.9, as well as five restraint measures agreed under Article 6.11. In addition the TMB reviewed, *inter alia*, 46 notifications made pursuant to Articles 2.6 and 2.7(a) and (b), 19 notifications under Articles 2.8(a) and 2.11 (the TMB has also started the review of 23 additional notifications under that Article, and one under Articles 2.8(b) and 2.11), 29 notifications under Article 3.1, and taken note of 65 administrative arrangements notified under Article 2.17, as well as of 64 notifications under Article 6.1. For this purpose, the TMB in many instances sought additional information or explanations from the Members before the review could be completed. This in many cases led to modifications of the original notifications, with a view to bringing them in line with the relevant provisions of the ATC.

343. In its report to the CTG in 1996, the TMB noted that an organizational aspect had also a bearing on its work. A number of TMB members were nominated by WTO Members represented by small delegations. These members had, in addition to the TMB, a number of other important duties to perform in their capacity as representative of their country or territory. While the TMB, in compliance with the decision of the General Council, submitted well in advance its tentative schedule of meetings for 1996, this was often not accommodated in the WTO schedule of meetings. On a number of occasions, meetings of two or three other WTO bodies took place in parallel with TMB meetings, making it difficult for some members or alternates to participate in TMB meetings. The TMB, therefore, had recommended that in order to facilitate its work, due consideration should be given to the schedule of meetings of the TMB in the WTO's overall schedule of meetings (G/TMB/113, paragraph 119). The Council for Trade in Goods took note of this recommendation at its meeting on 15 October 1996 (G/C/M/14, paragraph 5.37), but scheduling difficulties remain.

E. TRANSPARENCY

344. As noted in its report to the Council for Trade in Goods in 1996, the TMB has made substantial efforts to ensure and to improve the transparency of its proceedings. It has decided to circulate most of the notifications received to WTO Members without delay, as reflected in its working procedures. It has also tried to provide as much information as possible in its reports, reproducing in particular the views of the parties to a dispute, and also giving, to the extent possible, the reasons for the decisions reached by consensus. Furthermore, the concern for transparency was germane to the fact that in developing its working procedures the TMB agreed that, in dispute cases, representatives of the Members involved could be present and participate in the discussion, within certain limits, throughout the review, up to, and in some cases, including, the drafting of the recommendations. The TMB had also authorized its Chairman to circulate a note to WTO Members immediately following the conclusion of its review of dispute cases, so that its recommendations or findings would be available to WTO Members in advance of the circulation of the relevant report of the TMB.

345. In the Singapore Ministerial Declaration adopted on 13 December 1996, Ministers "agree that, keeping in view its quasi-judicial nature, the Textiles Monitoring Body (TMB) should achieve transparency in providing rationale for its findings and recommendations". In particular since the Ministerial Conference, the TMB endeavoured to improve the quality of the explanations it provided in terms of the rationale for its findings and recommendations.

F. DECISION-MAKING

346. In conformity with the relevant decision of the General Council (WT/L/26, paragraph 6), the TMB takes all its decisions by consensus. Consensus does not require the assent or concurrence of members appointed by Members involved in an unresolved issue under review by the TMB (Article 8.2).

347. This rule in decision-making implies that not only in cases of disputes between WTO Members, but practically in all instances, including the taking note of notifications and the adoption of its reports, the TMB has to proceed by consensus. The TMB noted in this regard the important number of matters it had to consider.

348. During the early period of the implementation of the ATC, the TMB had, in two dispute cases, been unable to reach consensus. In its report (1996) to the Council for Trade in Goods, the TMB expressed its concern that, in these cases, it could not arrive at a consensus decision on the matters brought to it and, therefore, could not fulfil its mandate (G/L/113). This was also discussed in the Council for Trade in Goods. In the Singapore Ministerial Declaration, Ministers "expect that the TMB shall make findings and recommendations whenever called upon to do so under the Agreement". It has to be noted that, apart from the cases mentioned above, the TMB succeeded to reach consensus decisions with respect to all other matters, and made findings and recommendations when called upon to do so under the Agreement.