WORLD TRADE ORGANIZATION

RESTRICTED

G/L/683
30 July 2004

(04-3284)

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 THIRD STAGE OF THE INTEGRATION PROCESS

I. This comprehensive report on the implementation of the Agreement on Textiles and Clothing (ATC) during the third stage of the integration process is transmitted, pursuant to Article 8.11, by the Textiles Monitoring Body (TMB) to the Council for Trade in Goods to assist the Council in the conduct of its third major review of the implementation of the ATC. In compliance with the deadline defined in Article 8.11 of the ATC, the report covers the period 1 January 2002 to 21 July 2004.

II. Article 8.11 requires that the comprehensive report cover implementation, 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. While Part One of the report is a brief introduction and Part Two summarizes the background, Part Three addresses in detail the implementation of the ATC during the third stage of the integration process. In this context, the integration process is dealt with in Section I, the application of the transitional safeguard mechanism is described in Subsection C of Section II and the other Subsections of Section II are devoted to the quantitative restrictions under Articles 2 and 3 and to related measures under Articles 4 and 5. Section III summarizes the implementation of provisions in the ATC related to special interests or particular situations of certain WTO Members, while Section IV contains information available to the TMB regarding some issues that could also be relevant in the context of the implementation of Article 7. Section V deals with some other matters, Section VI provides a summary of issues related to ATC implementation addressed in higher WTO bodies, Section VII addresses the compliance with notification requirements under the ATC, while Section VIII gives an overview of the functions of the TMB and the work carried out.

III. Part Four of the report contains elements for an overall assessment of the implementation of the ATC, with particular emphasis on developments during the third stage of the integration process. It is in the context of the latter that Part Four also summarizes some of the main elements included and the related observations made in Part Three.

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PART ONE: INTRODUCTION

1. Article 8.11 of the Agreement on Textiles and Clothing (ATC)[1] stipulates the following: "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".

2. The ATC defines three successive stages for the integration process (1995-1997, 1998-2001, and 2002-2004), following which, on 1 January 2005, the textiles and clothing sector shall be fully integrated into GATT 1994. In compliance with the requirements of Article 8.11, the Textiles Monitoring Body (TMB) adopted its Comprehensive Report 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 (hereafter referred to as the first comprehensive report of the TMB) on 24 July 1997. The report covered the period 1 January 1995 to 24 July 1997. The major review of the Council for Trade in Goods (CTG) started during its meeting of 6 October 1997 and was concluded by the CTG at its meeting of 16 February 1998, with the adoption of a text that summarized the discussions held according to main subjects areas and included observations or conclusions by the Council relative to these subjects.[2] The text adopted mentions that "[t]he Council took note of the comprehensive report that had been prepared by the TMB and considered that it provided a substantial background for the review". Also, in describing the different subject areas considered by the CTG during its major review, the text makes specific references to the respective sections of the TMB's first comprehensive report.

3. Following the requirements of Article 8.11, the TMB adopted its Comprehensive Report to the Council for Trade in Goods on the Implementation of the Agreement on Textiles and Clothing during the Second Stage of the Integration Process (hereafter referred to as the second comprehensive report of the TMB) on 20 July 2001. The report covered the period 1 January 1998 to 20 July 2001. The second major review of the Council started during its meeting of 27 September 2001. The review was conducted through a number of formal and informal meetings of the Council[3] and its outcome, in the form of a report, was adopted on 23 July 2002.[4] The report mentions that "[t]he Council noted the substantial information contained in the TMB's comprehensive report and considered that it would make a useful contribution to the review." Furthermore, the CTG expressed "the appreciation for the comprehensive report prepared by the TMB on the implementation of the ATC in the second stage and stressed the need for continued supervision by the TMB of the implementation of the ATC during the third stage".[5]

4. As the third stage of the integration process under the ATC comprises the period 1 January 2002 to 31 December 2004, the CTG is expected to conduct its third (and, at the same time, its last) major review before the end of 2004. The present comprehensive report on the implementation of the ATC during the third stage of the integration process was adopted and is being transmitted by the TMB pursuant to the provisions of Article 8.11.

[1] Unless otherwise specified, all Articles mentioned refer to the ATC.
[2] See G/L/224.
[3] The minutes of the formal meetings are contained in G/C/M/51, 52 and 56.
[4] See G/L/556.
[5] See paragraphs 42 and 592 to 594 below.

5. The 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.

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 …". Keeping also in mind this provision, in February 2004, the TMB issued a request to WTO Members, inviting them to submit notifications or information regarding the implementation of particular ATC provisions, for the purpose of facilitating the preparation of the TMB's comprehensive report.[6] Replies received from Members to this request and also to subsequent specific requests for clarification and comments addressed to some Members, have also been taken into consideration in the relevant sections of this report.[7] 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.[8] It also provided to the CTG annual reports[9] which contained a summary of the matters referred to and/or taken up by the TMB during the reporting periods, together with the main elements of the conclusions it reached and the related actions it took with respect to them. The present comprehensive report, in conformity with the mandate given to the TMB under Article 8.11, covers the period 1 January 2002 to 21 July 2004, the date of its adoption. Furthermore, the report also incorporates, to the extent necessary and as background information, references to issues and developments that took place during the first and second stages of the integration process, already reflected or not in the first and second comprehensive reports adopted by the Body. In particular, the report also provides a detailed overview of the developments that took place during the last few months (end of July-December 2001) of the implementation of the second stage of the integration process, after adoption by the TMB of its second comprehensive report.

8. While in conformity with what is indicated in paragraph 6, this report relies to a large extent on the notifications received by the TMB and the actions taken by it with respect to them; the Body has also provided further observations, comments, analysis and assessment with respect to different topics examined, for the consideration of Members. The concluding part of the report contains elements for an overall assessment of the implementation of the ATC, with particular emphasis on developments during the third stage of the integration process.

9. Bearing in mind the third major review to be conducted by the CTG, the TMB has decided to request the WTO Secretariat to provide to Members, as a background document, statistical information with respect to international trade in textiles and clothing. It is expected that this document will be issued and circulated to Members around the middle of September 2004.

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[6] See G/TMB/30.

[7] Such replies were received from the following Members: Canada, the European Communities, India "on behalf of the following members of the International Textiles and Clothing Bureau (ITCB) that are also Members and Observers of the WTO: Argentina; Bangladesh; Brazil; China; Colombia; Costa Rica; DPR Korea; Egypt; Guatemala; Hong Kong, China; India; Indonesia; Republic of Korea; Macao, China; Maldives; Pakistan; Paraguay; Sri Lanka; Thailand; Uruguay and Vietnam", (hereafter referred to as the communication of ITCB members), Turkey and the United States.

[8] For the reports adopted since the adoption of the TMB's second comprehensive report, see G/TMB/R/81 to G/TMB/R/112.

[9] See G/L/475, G/L/574 and G/L/632, G/L/650.

PART TWO: THE ATC AND ITS IMPLEMENTATION DURING STAGES 1 AND 2 OF THE INTEGRATION PROCESS, WITH PARTICULAR EMPHASIS ON DEVELOPMENTS DURING THE SECOND HALF OF 2001

I. THE ATC: AN AGREEMENT FOR A TRANSITION PERIOD OF TEN YEARS

10. The ATC sets out provisions to be applied by Members during a ten-year transition period for the integration of the textiles and clothing sector into GATT 1994. Article 9 provides that "[t]his Agreement and all restrictions thereunder shall stand terminated on the first day of the 121st month that the WTO Agreement is in effect, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. There shall be no extension of this Agreement." The WTO Agreement[10], together with the covered Agreements, including the ATC, entered into force on 1 January 1995. Thus the transition period of ten years stipulated by the ATC will expire on 1 January 2005. In order for this transition to be progressive in character, the ATC sets up successive stages for the integration of the products covered by the Agreement into GATT 1994: a first stage of the integration process from 1 January 1995 to 31 December 1997, a second stage from 1 January 1998 to 31 December 2001, and a third stage from 1 January 2002 to 31 December 2004. On 1 January 2005, the ATC and all restrictions thereunder shall stand terminated, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. The TMB felt that, before reporting on the implementation of the ATC during the third stage of the integration process, it would be useful to provide a brief reminder of the first two stages of ATC implementation, essentially by referring to the respective sections of the first and second comprehensive reports. In addition, developments during the implementation of the second stage, after adoption by the TMB of its second comprehensive report (i.e. between 21 July and 31 December 2001) are also detailed below.

II. IMPLEMENTATION DURING STAGE 1 (1995-1997) OF THE INTEGRATION PROCESS

11. The implementation of the first stage of the integration process was reported upon in detail by the TMB in its first comprehensive report in July 1997.[11] Furthermore, since that report contained information up to 24 July 1997 only, subsequent developments until the end of the first stage were reported in the introduction to the second comprehensive report.[12]

12. The TMB's review of the first stage of integration programmes is detailed in paragraphs 9 to 38 of the first comprehensive report. Developments subsequent to the issuance of the first comprehensive report are reported in paragraphs 27 to 45 of the second comprehensive report. As regards the quantitative restrictions notified under Article 2 and the issues related to the implementation of Article 2, the review by the TMB is contained in paragraphs 182 to 226 of the first comprehensive report. The application of the transitional safeguard mechanism (Article 6) is detailed in paragraphs 78 to 181 of the same report, while restrictions other than those maintained under the MFA[13] and covered by the provisions of Article 2 are addressed in paragraphs 227 to 247. Matters related to the administration of the restrictions referred to in Article 2 or notified under Article 6, as well as changes in practices, rules, procedures and categorization of products, are reported in paragraphs 248 to 265 of the first comprehensive report, those concerning the implementation of the provisions on circumvention being in paragraphs 266 to 273. Issues related to the implementation of the provisions of Article 7 of the ATC are dealt with in paragraphs 274 to 300 of that report, while particular provisions in the ATC related to special interests of certain WTO Members are detailed in

[10] Marrakesh Agreement Establishing the World Trade Organization.
[11] See G/L/179.
[12] See G/L/459, in particular paragraphs 27 to 45.
[13] Arrangement Regarding International Trade in Textiles, or Multifibre Arrangement, which was in effect until 31 December 1994.

paragraphs 301 to 323. Finally, paragraphs 331 to 348 of the first comprehensive report are devoted to the work carried out by the TMB.

III. IMPLEMENTATION DURING STAGE 2 (1998-2001) OF THE INTEGRATION PROCESS

A. MATTERS AND DEVELOPMENTS COVERED BY THE TMB'S SECOND COMPREHENSIVE REPORT

13. The implementation of the second stage of the integration process was reported upon in detail by the TMB in its second comprehensive report in July 2001.[14] Stage 2 integration programmes are addressed in detail in paragraphs 39 to 77 of the first comprehensive report as well as in paragraphs 46 to 78 of the second such report. Also, since they had to be notified during the period of implementation of Stage 2, the Stage 3 integration programmes are reviewed and analysed in paragraphs 79 to 114 of the same report. Other matters and aspects of implementation covered by the second comprehensive report include:

- the application of the transitional safeguard mechanism (paragraphs 115 to 243);
- quantitative restrictions notified pursuant to Article 2 and issues related to their implementation (paragraphs 244 to 339);
- restrictions other than those taken over from the former MFA regime (paragraphs 340 to 380);
- administration of restrictions and related matters falling under the provisions of Article 4 (paragraphs 381 to 429);
- implementation of the provisions related to problems arising from potential circumvention of the ATC (paragraphs 430 to 481);
- issues referred to or taken up by the TMB with reference to the provisions of Article 8 (paragraphs 482 to 530);
- issues related to the implementation of Article 7 (paragraphs 531 to 572);
- implementation of provisions in the ATC related to special interest or particular situations of certain Members (paragraphs 573 to 600);
- other issues such as continuous autonomous industrial adjustment in the sense of Article 1.5; regional arrangements and initiatives; elimination of restrictions on imports from certain non-WTO Members; accession of new Members to the WTO (paragraphs 601 to 648);
- compliance with notification requirements under the ATC (paragraphs 649 to 654);
- functions and work carried out by the TMB (paragraphs 655 to 672).

B. FURTHER DEVELOPMENTS UNTIL THE END OF STAGE 2 OF THE INTEGRATION PROCESS

14. Since, in compliance with the requirements of Article 8.11, the TMB had to transmit its comprehensive report on the implementation of the ATC during the second stage of the integration

[14] See G/L/459.

process to the Council for Trade in Goods at least five months before the end of this stage, that report contained information up to 20 July 2001. Further developments during the second stage, after adoption by the TMB of its second comprehensive report, are reported below.

1. Integration programmes

(a) Notifications by a newly acceded Member

(i) Notification received pursuant to Article 6.1

15. In July 2001, Lithuania, which had become a Member of the WTO on 31 May 2001, notified pursuant to Article 6.1 that it wished to retain the right to use the transitional safeguard provided for in that Article. The TMB took note of this notification.

(ii) Notifications received with reference to Articles 2.6 and 2.7(b) (Stage 1), 2.8(a) and 2.11 (Stage 2), 2.8(b) and 2.11 (Stage 3)

16. Lithuania notified in September 2001 its integration programmes for the three stages. In reviewing, pursuant to Article 2.21, these notifications, the TMB noted that the volume of the products integrated as a percentage of the volume of imports into Lithuania in 1995 of the products falling under the coverage of the Agreement amounted to 16.85 per cent for the first stage, 17.69 per cent for the second stage and 20.20 per cent for the third stage. The TMB further noted that, in each stage, the products integrated included, in accordance with the applicable provisions of Article 2, products from each of the four groups: tops and yarns, fabrics, made-up textile products and clothing. With respect to the fact that the calculation of the share of the products integrated had been made on the basis of a different base year, other than 1990, the TMB took note of the statement by Lithuania that 1995 represented the first fully reliable statistical year based on the Harmonized System (HS) in Lithuania.

(b) Notifications under Articles 2.8(b) and 2.11: Stage 3 integration programmes

17. In addition to Lithuania, noted in paragraph 16 above, Bolivia and Thailand notified their respective Stage 3 integration programmes pursuant to Articles 2.8(b) and 2.11 during the period between the adoption by the TMB of its second comprehensive report and the end of 2001. Also, during that period the TMB received and considered the replies to the specific questions raised and clarifications sought by the TMB from, respectively, Cyprus, Morocco and Tunisia with respect to their notifications under Articles 2.8(b) and 2.11. The Body also examined a reply of El Salvador which it had already received but had not been in a position to examine before the adoption of its second comprehensive report. The TMB began its review of the notification submitted by Bolivia and decided to seek clarification with respect to certain elements of the notification, but could not complete its review before the end of 2001 since no reply had been received from Bolivia. The TMB took note of the notifications by Cyprus, El Salvador, Morocco, Tunisia and Thailand. In all these five cases, the Stage 3 integration programmes met the basic requirements of Article 2.8(b). In particular, the volume of the products integrated amounted to the following percentages of the total volume of the products falling under the coverage of the Agreement: Cyprus: 18.04 per cent (of the value of imports in 1990); El Salvador: 18 per cent; Morocco: 18.81 per cent; Tunisia: 20.42 per cent; and Thailand: 18.59 per cent. With regard to Cyprus, the TMB observed that the integration programme contained one product falling under an HS line in the Annex to the ATC for which only part of the line fell under the coverage of the Agreement ("ex HS line") and that the description of this product corresponded precisely to that contained in the Annex. With regard to the fact that the calculation of the share of the products to be integrated had been made on the basis of the value of 1990 imports, the TMB ensured that no better data were available and that Cyprus had followed the same approach as for the notifications it had submitted pursuant to Articles 2.6 and 2.7(b), as well as Articles 2.8(a) and 2.11. With respect to Morocco, the TMB noted that, given

the structure of the notification, it was not possible to assess without doubt, in a limited number of cases, whether or not a product line had already been integrated in a previous stage. It observed in this regard, however, that even if all the imports of such lines were not counted in the volume of imports of the products to be integrated, that volume would still amount to not less than 18 per cent of the total volume of Morocco's 1990 imports of the products in the Annex, as envisaged in Article 2.8(b). With regard to Thailand, the TMB noted that the notification, as revised, contained two HS lines which did not appear to fall under the coverage of the ATC, and that three other HS lines had already been integrated by Thailand during the first stage. The TMB also noted that the integration programme contained four HS lines falling under an "ex HS line" in the Annex to the ATC, and that with respect to two of these HS lines Thailand had reaffirmed that the levels of 1990 imports of those two products corresponded to the respective product description contained in the Annex to the ATC. The TMB observed in this regard that if the imports of the non-ATC products were discounted, as well as those of the two "ex HS lines" for which no specific explanation had been available as to the correspondence with the ATC Annex, and if the volume of imports of those products already integrated in Stage 1 were not counted in the volume of imports of the products to be integrated, that volume would still amount to not less than 18 per cent of the total volume of Thailand's 1990 imports of the products in the Annex, as envisaged in Article 2.8(b). With respect to notifications addressed to the TMB after the relevant deadlines specified in the ATC, the TMB reiterated that its taking note of late notifications was without prejudice to the legal status of such notifications. The examination of the notifications by Nicaragua and the Slovak Republic of their respective Stage 3 integration programmes continued, also on the basis of new information or clarifications received, but could not be completed before the end of 2001 since the TMB had not received the answers to the further clarification it had sought from those Members.

(c) Related matters: the abolition of visa requirements by the United States

18. In the context of its review of the notifications received pursuant to Articles 2.8(b) and 2.11, the TMB at its meeting of November 2001 recalled its earlier review of the US' notification under those Articles and, in particular, the question of the elimination of visa requirements with respect to the products integrated as a result of the Stage 3 integration programme. The Body had, *inter alia*, expected that it would be informed as soon as possible of the outcome of any follow-up consideration to be given to this matter by the United States. Observing that no further communication had been received from the United States in this regard, the TMB decided to seek information regarding this matter. In fact, the TMB expected the United States to provide a reply to the confirmation sought earlier by the Body that no visa requirement would be applied to any of the products integrated into GATT 1994 as a result of the implementation of the Stage 3 integration programme as from 1 January 2002. In response, on 11 December 2001 the United States informed the TMB that the visa requirement for products integrated in the third stage had been eliminated.[15]

2. Quantitative restrictions notified under Article 2.1 and issues related to their implementation

(a) New notifications received with reference to Article 2.1

19. Following the accession of China to the WTO, Canada and the European Communities notified in December 2001 the quantitative restrictions they maintained under Article 2.1 in respect of imports of certain products from China. The Body's examination of these notifications is reported in Part Three, Section II of the report.[16]

[15] See paragraphs 57 and 58 below.
[16] See paragraphs 147 to 149 and 152 to 156 below.

(b) No recourse to the provisions of Article 2.15 (elimination of restrictions without integration)

20. From 21 July to 31 December 2001, no notification was received pursuant to Article 2.15, which allows the elimination of any restriction maintained pursuant to Article 2.

(c) Implementation of the provisions of Article 2.18

21. At its November 2001 meeting, the TMB noted that under the provisions of Article 2.18, which apply to small suppliers and new entrants in the field of textiles and clothing trade, as well as, to the extent possible, to least-developed country Members, "… meaningful improvement in access for their exports shall be provided […] for the duration of this Agreement [i.e. the ATC] …". The TMB considered that in order to comply with the requirements of the first sentence of Article 2.21, it should receive the necessary information from the Members concerned on how they intended to implement the provisions of Article 2.18 as from 1 January 2002. With respect to Canada, on the basis of a communication received in the context of the preparation of the second comprehensive report, the TMB understood that Canada would increase the resulting annual growth rates of the levels of the remaining restrictions for small suppliers by 27 per cent as from 1 January 2002. With respect to the United States, the TMB observed that though it had not received any official communication from it regarding this matter, the representative of the United States had indicated in the meeting of the Council for Trade in Goods, on 26 October 2001, that it was the US' intention to increase the annual growth rates applied for small suppliers during Stage 2 by 27 per cent as from 1 January 2002. The TMB, therefore, sought confirmation from the United States in this regard. With regard to the European Communities, the TMB decided to seek information as to the methodology it would apply as from 1 January 2002 in order to implement the provisions of Article 2.18 for the third stage of the integration process. At the December 2001 meeting, on the basis of the earlier communication by Canada referred to above and the replies received, respectively, from the European Communities and the United States to the TMB's request for information, the TMB noted that the three Members concerned would increase the annual growth rates applied during Stage 2 for WTO Members falling under the provisions of Article 2.18 in their respective regimes by 27 per cent as from 1 January 2002.

3. Quantitative restrictions notified with reference to Article 3.1

22. Following the accession of China to the WTO, the European Communities provided a notification in December 2001 on the quantitative restrictions it maintained with reference to Article 3.1 on certain imports from China. The examination by the TMB of this notification is reported in Part Three, Section II of the report.[17]

4. Transitional safeguard measures

23. 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. 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. In cases where a restraint measure is introduced 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".

24. 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 concerned and by the TMB in assessing the

[17] See paragraphs 376 and 398 below.

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 that in making a determination of serious damage, or actual threat thereof, the Member invoking the provisions of Article 6 has to examine the effect of the increased quantities of total imports on the state of the particular industry, as reflected in changes in the economic variables listed in the same provision. Article 6.4 outlines circumstances under which such serious damage, or actual threat thereof, can be attributed to imports from certain Members.

(a) Imports into Poland of acrylic/modacrylic staple yarn, pure or mixed with wool or fine animal hair (HS numbers 5509 31, 5509 32 and 5509 61) from Romania

(i) Notification under Article 6.10

25. On 23 April 2001, Poland requested consultations with Romania pursuant to Article 6.7. Consultations were held, which did not result in a mutual understanding as to whether the situation called for restraint on the imports from Romania of the products in question. The safeguard measure was eventually imposed by Poland on 20 July 2001, and notified to the TMB in accordance with Article 6.10.

26. The TMB examined this safeguard measure at its September 2001 meeting with the participation of representatives of both parties. During this review the TMB noted, *inter alia*, that the factual information provided by Poland pursuant to Article 6.7 covered the period of 12 months between 1 January 2000 and 1 January 2001, which, as explained by Poland, was related as closely as possible to the reference period set out in Article 6.8. The TMB observed that, in its presentation of the case before the TMB, the representative of Poland had provided some additional details, in particular with respect to trends in total imports and their breakdown according to country of origin during the reference period, as well as regarding the evolution of some of the economic variables listed in Article 6.3. While recognizing that this additional information could contribute, in some respect, to a better understanding of developments that had affected the domestic producers and the Polish market, the TMB reiterated its statement made on previous similar occasions that its examination of the respective measures had to be based essentially on the information made available by the importing Member in accordance with Article 6.7 at the time the request for consultation had been made. The TMB also noted that in the factual information provided by Poland pursuant to Article 6.7, data related to production, domestic sales, market share and exports covered the entire Polish industry producing the yarns in question, while all the other data (inventories, employment, profits, productivity, capacity utilization, wages, domestic prices and investments) reflected the performance of the three companies which had applied for the introduction of the safeguard measure (the "petitioners"). In the same factual information, Poland had explained that these three companies constituted, in terms of the volume of production, roughly 70 per cent of the domestic industry during the reference period and, therefore, indicators describing their situation could be considered as representative of the whole domestic industry. According to Poland, this was all the more so since, in the remaining four companies, the liquidation process was underway and, had data been available regarding these producers also, they would have shown even more serious damage for the domestic industry. Noting the statement of the representative of Romania that, for most economic variables mentioned in Article 6.3, the information presented by Poland referred "only to a selection of a number of companies operating in this field", the TMB also noted that, in his presentation to the TMB, the representative of Poland had made an effort to provide relevant information covering the domestic industry as a whole, in most respects including also the remaining 30 per cent of the domestic production represented by the companies under liquidation. Reiterating its statement that the examination by the TMB had to be based essentially on the information made available by Poland

under Article 6.7 at the time Poland had requested consultations with Romania, the TMB also observed that though the additional information included in the presentation of the representative of Poland contained some important details, including corrections of some of the information previously provided, it did not significantly alter the overall picture that had emerged from the factual information provided pursuant to Article 6.7.

27. Examining the developments in total imports into Poland of the subject yarns, the TMB noted that there had been an increase in the volume of total imports in the year 2000, the reference period, compared to the previous year. It could not be ignored, however, that the volume of imports continuously decreased in 1998 and 1999, and that the level achieved in 2000 still remained well below the volume of total imports in 1996 and 1997, respectively. In this light, the trends indicated, at most, a recovery of total imports, but did not appear to substantiate the claim of a significant increase compared to the performance achieved in previous years. As to the argument of Poland that the decrease experienced in 1998 and 1999 was only in absolute terms, but not relative to consumption, the TMB observed that the ATC does not incorporate the concept of increased quantities of imports relative to other factors. The TMB was of the view, therefore, that the 10.5 per cent increase in total imports reported for the reference period should be assessed in its proper context and expressed doubts that the alleged serious damage could be caused by the 10.5 per cent increase in total imports during the reference period. These doubts notwithstanding, the TMB decided to review the state of the Polish domestic industry and to revert to this aspect of the case, if necessary, at a subsequent stage of its examination.

28. As regards the possible effect of the increased quantities of total imports on the state of the particular industry, as reflected in changes in the economic variables mentioned in Article 6.3, the TMB, having examined one-by-one the developments in the different economic variables as reported by Poland, reached the following overall conclusions:

- A number of important economic indicators (output, productivity, investments, exports) revealed positive developments, while the trends in some others (inventories, utilization of capacity, wages) could be considered to be neutral. Though the market share of domestic producers decreased somewhat, practically all their production could be sold. Domestic prices did not show a dramatic decline, while the decrease in employment could be, in most part, explained by the effects of investments made. Negative profitability was an issue of concern, but trends indicated favourable changes also in this regard as well as the possibility of returning to positive profit rates in the forthcoming period.

- It was understood that the Polish market for the products in question had been faced with serious challenges in the period 1996 to 1998. However, in the period examined, it had started to recover and the factual information provided by Poland and analysed by the TMB revealed a domestic industry in the process of restructuring. Restructuring had started earlier than the reference period and in 2000 it seemed to enter into its final stage.

- On the basis of the information available to it, and keeping in mind the above, the TMB concluded that the overall picture presented had not shown a domestic industry suffering serious damage in 2000.

- In light of this conclusion, there was no need for the TMB to examine the possible causal relationship between developments in imports and the state of the domestic industry, as reflected in changes in the economic variables mentioned in Article 6.3.

29. The TMB, therefore, concluded that Poland had not demonstrated that the yarns subject to its safeguard measure were being imported into its territory in the reference period in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. The TMB recommended that Poland rescind the transitional safeguard measure introduced on imports of acrylic/modacrylic staple yarn, pure or mixed with wool or fine animal hair from Romania.

(ii) Notification under Article 8.10

30. Article 8.9 states that "Members shall endeavour to accept in full the recommendations of the TMB, which shall exercise proper surveillance of the implementation of such recommendations". However, 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".

31. On 17 October 2001, the TMB received a communication from Poland with reference to Article 8.10, following the examination by the TMB, described in paragraphs 26 to 29 above, of the transitional safeguard measure introduced by Poland on 20 July 2001, for a duration of three years, on imports from Romania of acrylic/modacrylic staple yarn, pure or mixed with fine animal. In this communication, Poland stated that it considered itself unable to conform with the recommendation the TMB had made for the following reasons: (i) conforming to the TMB's recommendation, i.e. withdrawing the safeguard measure would result in the elimination of the acrylic yarn industry in Poland; (ii) apart from the economic indicators which clearly showed a negative trend in the reference period (sales, share in the market, financial losses, employment), one could observe opposing trends with respect to some other indicators which had been considered by the TMB as being neutral (inventories, investments and capacity utilization). On the one hand, the companies in liquidation were selling out their inventories and capital equipment at low prices. On the other, the three still-in-business companies suffered from growing inventories, but nevertheless tried to invest in the development and slightly increased their production capacity. The market behaviour of the companies in liquidation adversely affected the remaining companies and the difficult situation of the former had been caused by the competition of the low-priced imports. In this sense, there was a domino effect and imports caused serious damage to the industry, both directly and indirectly; (iii) Romania was the biggest exporter of the yarn in question to the Polish market and these goods were being exported by Romania under conditions of permanent undercutting of Polish domestic prices. For these reasons and with a view to rescuing the still-in-business domestic producers, Poland requested the TMB to reconsider its recommendation on the matter.

32. The TMB examined this communication and the reasons given by Poland for its inability to conform with the TMB's recommendation at its November 2001 meeting, with the participation of representatives of both parties. During this examination, the TMB noted that the presentation of the representative of Poland contained, *inter alia*, elements which constituted new information and evidence in the sense that they had not been included in the specific and relevant factual information referred to in Article 6.7 and that they had not been raised during the examination of the matter by the TMB under Article 6.10 either. The TMB, therefore, requested clarification as to whether Poland expected the TMB to review the transitional safeguard measure on the basis of a new reference period (i.e. 1 January 1996 to 30 September 2001), different from the one that had been presented under Articles 6.7 and 6.10, also taking into account a new set of data covering the entire domestic industry. In reply, the representative of Poland stated that while certain data and information had not been available at the time the TMB had conducted its examination of the case under Article 6.10, the Polish authorities subsequently had managed to provide all the relevant information and had decided to share

it with the TMB in order to underscore certain basic facts regarding the extremely serious situation facing the domestic industry. In his view, had the TMB been provided with this information, the overall conclusion the TMB had arrived at during its examination pursuant to Article 6.10 would have been different. This also implied that, on the basis of the selected and limited set of data available to it, the TMB had not erred in its reaching its previous conclusions. By providing the fullest possible picture under Article 8.10, Poland was not making a formal request that the TMB conduct a *de novo* review on the basis of an extended reference period and of a broader industry coverage. The representative of Poland also recognized that, from a strict legal standpoint, the question could arise whether new information could be introduced at all, or not, in the context of the TMB's consideration of the case pursuant to Article 8.10. However, the Polish authorities still held the view that the Polish industry producing the yarn in question had suffered serious damage as a result of increased quantities of total imports. Furthermore, by rescinding the transitional safeguard measure, the survival of the entire domestic industry would be jeopardized.

33. The TMB noted that Poland did not make a formal request for a *de novo* review by the TMB on the basis of the new information and evidence presented. It was also noted that the representative of Poland recognized that introducing new data and information in the context of an examination made under Article 8.10 might have legal implications. The TMB understood that the basic objective of Poland in providing additional information was to give the fullest possible picture regarding the state of, and developments in, the domestic industry. The TMB recalled that it had already stated, when reviewing the measure under Article 6.10, that its examination had to be based essentially on the information made available by Poland under Article 6.7, at the time Poland had requested consultations with Romania. It noted, furthermore, that the review of the Polish communication submitted under Article 8.10 had to be guided by the same approach. It was also observed that though the new data and information provided by Poland filled some gaps in terms of giving a fuller picture of the developments affecting the Polish industry, they did not contain elements which the TMB had been completely unaware of and that would lead the Body to a significantly different assessment, compared to the one it had made under Article 6.10.

34. Having made the preliminary comments noted above, the TMB considered one-by-one the reasons given by Poland for its inability to conform with the recommendation the TMB had made. As to the developments in the Polish domestic industry during the last five years, in essence Poland argued that the competition of low-priced imports during these five years had resulted in the bankruptcy of five plants and forced three others to begin a liquidation process. Since the three further remaining companies had also been facing difficulties, the withdrawal of the safeguard measure would have driven them out of business. As to the arguments related to developments in the Polish market and domestic industry during the last five years, i.e. during the period starting with 1996, the TMB recognized that the ATC does not provide specific guidance as to how long the period of investigation (and, consequently, the period covered in the specific and relevant information in the sense of Article 6.7) should be. Therefore, the definition of the length of the period of investigation was very much left to the discretion of the authorities of the Member invoking the provisions of Article 6. While the use of the present tense of the verb in Article 6.2 (i.e. "… a particular product is being imported …") and the reference to the information "as up-to-date as possible" in Article 6.7 appear to indicate that the information to be provided should at the minimum, include developments of the recent past, there is no similar guidance regarding what should be the starting-point of the period covered by the factual information. In view of this, the TMB had proceeded to the examination of the matter under Article 6.10 on the basis of the information provided by Poland for the period of 12 months (from 1 January 2000 to 1 January 2001). It also follows from this that reference to developments that occurred prior to the period covered by the factual information provided pursuant to Article 6.7 could hardly be considered as a valid reason for a Member's inability to conform with the TMB's recommendation. The TMB was aware, however, that in his presentation of the case under Article 6.10, the representative of Poland had already provided some additional information, part of which had also touched upon aspects related to developments in the period 1996 to 1998. Analysing these data, the TMB had already expressed the view that the trends indicated, at

most, a recovery of total imports, but did not appear to substantiate the claim of a significant increase in imports compared to the performance achieved in previous years. Furthermore, the new information and data provided by Poland under Article 8.10 confirmed the overall picture the TMB had already observed during its examination pursuant to Article 6.10. Important changes had started in the middle of the 1990s, characterized by a drastic decline in consumption, a continuously shrinking domestic market and production consolidating down to three companies. However, imports were also fluctuating and, in any case, did not increase in such quantities (during the reference period either) that would have justified recourse to the provisions of Article 6. The TMB, in this light, could not reach the conclusion that the competition of low-priced imports had caused the bankruptcy of five plants and led to the liquidation process of three other companies. In any event, the five plants had gone bankrupt prior to the period for which information was provided by Poland under Article 6.7. Furthermore, all the indications received also pointed to the fact that the liquidation process of the three other companies had either begun earlier than the reference period or in no case could the situation of these companies be attributed to the increase in total imports in 2000. The TMB, therefore, took the view that the claim that the withdrawal of the safeguard measure would result in the elimination of the entire Polish industry producing the yarn in question, could best be addressed after having considered all the reasons given by Poland in its Article 8.10 communication.

35. Another reason raised by Poland for its inability to conform with the TMB's recommendation could be described as an assessment different from the one made by the TMB with respect to developments in certain economic variables specified in Article 6.3. According to Poland, apart from the economic indicators which clearly showed a negative trend in the reference period (domestic sales, market share, financial losses and employment), there were opposing trends with respect to some other indicators which had been considered by the TMB as being neutral (inventories, investments and capacity utilization). While these latter indicators seemed to be neutral during the reference period at the level of the domestic industry taken as a whole, the respective performances of the three companies in liquidation and of the three other companies were very much different. Poland had stated in this regard that the market behaviour of the companies in liquidation had had an adverse effect on the situation of the remaining plants. The TMB examined in detail these arguments. It observed, in particular, that investment had not been considered by the TMB as neutral but rather as a positive element in so far as the three plants still in business were concerned, which appeared to have started to regain confidence and had made business strategies for the long term. As regards inventories, the TMB, *inter alia*, could not agree with the contention that the three petitioners had suffered seriously from growing inventories, as the inventory level of the three petitioners remained relatively low and did not in itself point to an industry facing serious problems in selling its production. As far as utilization of capacity was concerned, the TMB observed that the performance of the three petitioners had improved during the reference period. While it could be argued that capacity utilization could be considered not to be satisfactory, it could not be claimed that there was no improvement in terms of capacity utilization during the period examined. Furthermore, the low rate of utilization could also raise questions regarding the adequacy of the adjustments implemented or of the forecasts made with respect to future selling possibilities. The TMB, therefore, concluded that as regards the three "petitioners", investments implemented represented positive developments during the period examined; a slight improvement in terms of capacity utilization could also be registered, while no important change had occurred regarding the level of the inventories. As to the argument of Poland according to which, as far as inventories and capacity utilization were concerned, the market behaviour of the companies in liquidation adversely affected the operation of the remaining companies, and the difficult situation of the former had been caused by the competition of low-priced imports, the TMB observed that by using these arguments, Poland indirectly seemed to recognize that factors other than increased imports during the reference period could cause or largely contribute to the state of the domestic industry producing like and/or directly competitive products. If Poland considered that the situation of the three in-business companies had not been satisfactory, Poland recognized at the same time that this had largely been attributable to the adverse effects of the market behaviour of the companies in liquidation and not to the increase in total imports during the reference period. In analysing the situation at the outset, Poland should have distinguished the serious

damage allegedly caused by increased imports during the period examined from the damaging effects caused by possible other factors.

36. As to the third main reason given by Poland for its inability to conform with the TMB's recommendation, the fact that Romania had been the biggest exporter to the Polish market and that these exports had been realized under conditions of permanent undercutting of Polish domestic prices, the TMB noted that before addressing issues specified in Article 6.4 (attribution of serious damage to imports from individual Members), it had first to be fully satisfied with the determination made by the importing Member that the product in question was being imported in such increased quantities as to cause serious damage to the domestic industry. This had not been the case when reviewing the same measure under Article 6.10 and the arguments raised by Poland with reference to Article 8.10 did not change the TMB's views and conclusion in this regard. Therefore, the TMB had to decline from considering issues related to the share and price level of imports from Romania in the Polish market.

37. The TMB finally returned to the consideration of the claim of Poland that the withdrawal of the transitional safeguard measure would result in the elimination of the entire Polish industry producing acrylic/modacrylic staple yarn. Since the TMB's consideration of the reasons provided by Poland for its inability to conform with the TMB's recommendation did not lead the Body to change its assessment with respect to any important aspects involved in the case and, in particular, that Poland had not demonstrated that the yarns subject to its safeguard measure were being imported into its territory in the reference period in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products, the TMB could not agree with that claim. Having given thorough consideration to the reasons presented by Poland for its inability to conform with the TMB's recommendation, the TMB concluded that these reasons did not lead it to change the conclusion and recommendation arrived at by it during the examination of the transitional safeguard measure in question pursuant to Article 6.10. The TMB recommended, therefore, that Poland reconsider its position and that the safeguard measure introduced on the imports from Romania of acrylic/modacrylic staple yarn, pure or mixed with wool or fine animal hair, be rescinded forthwith.

(iii) Implementation of the TMB's recommendation

38. At the TMB meeting in December 2001, bearing in mind that Article 8.9 of the ATC states that " [t]he Members shall endeavour to accept in full the recommendations of the TMB, which shall exercise proper surveillance of the implementation of such recommendations", and in view of the fact that the TMB had received no information from Poland as to the implementation of the above-mentioned recommendation, the TMB decided to request such information from Poland.[18]

(b) United States – Transitional Safeguard Measures on Combed Cotton Yarn from Pakistan: decision by the DSB

39. On 9 July 2001, the United States had notified[19] its decision to appeal to the Appellate Body certain issues of law covered in the report of the Panel established at the request of Pakistan, pursuant to Article XXIII:2 of GATT 1994, to examine the decision taken by the United States to maintain in place a restraint on imports of combed cotton yarn from Pakistan which the TMB had recommended the United States to rescind[20]. The Appellate Body considered the issues referred to it and, *inter alia*, recommended that the Dispute Settlement Body (DSB) request the United States to bring its measure, found in the Appellate Body Report and in the Panel Report as modified by the Report of the Appellate Body to be inconsistent with the ATC, into conformity with its obligations under that

[18] For the follow-up information received subsequently from Poland, see paragraph 440 below.
[19] See G/L/459, paragraph 151.
[20] Ibid.; paragraphs 136 to149.

Agreement. On 5 November 2001, the DSB adopted the Appellate Body Report[21] and the Panel Report as modified by the Appellate Body Report. At the subsequent meeting of the DSB in November 2001, the representative of the United States stated that on 8 November 2001 the Committee for the Implementation of Textile Agreements, chaired by the Department of Commerce, had directed the US Customs Service to eliminate the limit on imports of combed cotton yarn from Pakistan. This action was effective from 9 November 2001.

5. Issues related to ATC implementation addressed in higher WTO bodies

(a) Preparation for the Doha Ministerial Conference and the Doha Decision

40. In the context of the preparation for the Doha Ministerial Conference a series of formal and informal consultations were held in relation to the implementation of the ATC, on the basis of the General Council's decision of 3 May 2000 to meet in special sessions to address outstanding implementation issues, and to assess the existing difficulties, identify ways needed to resolve them, and take decisions for appropriate action not later than the Fourth Session of the Ministerial Conference. Proposals were made by certain Members with respect to some aspects of ATC implementation. In particular, on 28 August 2001, the members of the South Asian Association for Regional Cooperation[22] addressed a communication to the Chairman of the General Council which, *inter alia*, addressed the question of ATC implementation, stressing the need and proposing measures for a "more meaningful integration of the textile and clothing sector".[23] The measures proposed included, *inter alia*, accelerated removal of quota restrictions, implementation of increased growth rates for the remaining years of the ATC, exercise of restraint on unilateral modification of rules of origin to the detriment of developing and least developed countries, application of moratorium on anti-dumping, anti-subsidy and safeguard measures, resorted to by importing countries on exports from developing and least developed countries until 1 January 2007. Also, in a communication dated 22 October 2001[24] the Group of 77 and China stressed the immediate need for a meaningful integration of the textile and clothing sector, in view of very limited liberalization of trade, affecting items under specific quota restraints and for a meaningful increase in access possibilities for small suppliers from developing countries. Measures in this regard were to include, *inter alia*, accelerated liberalization through removal of restrictions in accordance with the ATC and application of a moratorium on anti-dumping, anti-subsidy and safeguard measures resorted to by industrialized countries.

41. On 26 September, the Chairman of the General Council and the Director-General tabled a draft decision on implementation-related issues and concerns, and revised versions of the draft were further tabled on 27 October and 13 November 2001. On 14 November 2001, the Doha Ministerial Conference adopted a Decision on implementation-related issues and concerns[25] which included the following section on ATC implementation. The Ministerial Conference:

> "Reaffirms the commitment to full and faithful implementation of the Agreement on Textiles and Clothing, and agrees:
>
> [-] that the provisions of the Agreement relating to the early integration of products and the elimination of quota restrictions should be effectively utilized.
>
> [-] that Members will exercise particular consideration before initiating investigations in the context of antidumping remedies on textile and clothing exports from developing

[21] See WT/DS192/AB/R.
[22] SAARC Member States are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.
[23] See WT/L/412.
[24] See WT/L/424.
[25] See WT/MIN(01)/17.

countries previously subject to quantitative restrictions under the Agreement for a period of two years following full integration of this Agreement into the WTO.

[-] that without prejudice to their rights and obligations, Members shall notify any changes in their rules of origin concerning products falling under the coverage of the Agreement to the Committee on Rules of Origin which may decide to examine them.

Requests the Council for Trade in Goods to examine the following proposals:

[-] that when calculating the quota levels for small suppliers for the remaining years of the Agreement, Members will apply the most favourable methodology available in respect of those Members under the growth-on-growth provisions from the beginning of the implementation period; extend the same treatment to least-developed countries; and, where possible, eliminate quota restrictions on imports of such Members;

[-] that Members will calculate the quota levels for the remaining years of the Agreement with respect to other restrained Members as if implementation of the growth-on-growth provision for stage 3 had been advanced to 1 January 2000;

and make recommendations to the General Council by 31 July 2002 for appropriate action."[26]

(b) Second Major Review of the Implementation of the ATC by the Council for Trade in Goods

42. The CTG started its major review of the implementation of the ATC in the second stage of the integration process (i.e. 1 January 1998 to 31 December 2001) at its meeting of 27 September 2001. To assist in this review, the CTG had before it the comprehensive report prepared by the TMB in accordance with Article 8.11[27], as well as background statistical information with respect to trends in world trade in textiles and clothing prepared by the WTO Secretariat at the request of the TMB[28] and a submission provided by the delegation of Uruguay on behalf of International Textiles and Clothing Bureau (ITCB) members that are also Members or observers of the WTO.[29] The CTG, *inter alia*, agreed on the structure of the review covering the groupings and the individual topics which Members wished to address. A list of topics for examination, comprising four subject areas (i.e. "The Integration Process and Other Related Issues in Article 2", "The Use of the Transitional Safeguard Mechanism in Article 6", "Other Articles of the ATC" and "Other Issues"), had been agreed. At its meeting on 17 October 2001, the Council began its detailed discussion of the subject areas. Specifically, the Council addressed, in detail, a number of topics under the first two subjects and began discussion of the third subject area. On 26 October 2001, the Council continued its discussion of the six remaining topics under "Other Articles of the ATC". It appeared from the discussion that there were wide gaps in the understandings and perceptions on some subjects, but that on some other subjects there appeared to be a possibility of reaching some conclusions. Therefore, the Council decided that its Chairman would hold informal consultations with a view to identifying which conclusions could be agreed upon. At the CTG meeting on 4 December 2001, the Chairman reported that he had been holding further informal consultations to reach an understanding on the final report. This process was ongoing and required additional time to be completed, and it was his intention to continue consultations and to provide a further statement at the meeting of the General Council on 19-20 December 2001. Furthermore, when this process would be complete, he would submit a report to the Council for Trade in Goods. The CTG Chairman informed the General Council on 20 December 2001 that, in view of important gaps in the understandings of the participants which

[26] For the follow-up of the Ministerial Decision, see in particular paragraphs 586 and 587 as well as paragraph 595 below.
[27] See G/L/459.
[28] See G/L/474.
[29] See G/C/W/304.

remained to be bridged, the consultation process would continue and be intensified in 2002, with a view to submitting a report to the Council at the earliest possible date.[30]

(c) The CTG's oversight function pursuant to Article IV of the Agreement Establishing the WTO – Transparency regarding new restrictions on textile and clothing products commented on by the Textiles Monitoring Body

43. At its meeting on 5 October 2001, the CTG resumed its consideration of this issue, which had first been raised in the CTG meeting in February 2001 during the consideration of the report of the TMB for the year 2000.[31] The specific issue was the presence of a bilateral restraint agreement between the United States and Turkey on Turkey's exports of one category of clothing, as a part of a wider understanding between these two countries. The concern related to the relationship of this bilateral restraint agreement to the ATC, and, more generally, to the TMB's responsibility for supervising the implementation of the ATC and the CTG's role in overseeing this process. Following the initial consideration of February 2001 and informal consultations, which had not been successful in finding an acceptable solution, the matter, which had been included in the CTG's agenda at the request of Hong Kong, China on behalf of a group of Members, had been further discussed at the CTG meetings of 14 March and 18 April 2001. It had been proposed by these Members that the CTG would (i) request all Members to promptly provide full details of any new restrictions to the TMB along with the specific provisions of the ATC justifying their introduction; (ii) invite the Members concerned to clarify and rectify the measures that have already been the subject of TMB review and comments; (iii) reemphasize the need, particularly for the restraining Members, to ensure the conformity of all measures with their obligations under the Agreement.[32] The CTG, at its October 2001 meeting, agreed that its Chairman would continue consultations on how to deal with this issue and also hold further consultations on the substantive aspects involved. At the CTG meeting on 4 December 2001, it was agreed that since this issue was also under discussion within the framework of the CTG's second major review of the implementation of the ATC, and in light of the fact that the Council was considering its possible conclusions of the major review at the same time, it seemed appropriate to take up this matter taking into account the outcome of the major review.[33]

(d) Composition of the TMB for Stage 3

44. The composition of the TMB for the third stage of implementation of the ATC (2002 to 2004) was decided by the General Council on 20 December 2001.[34] The list of TMB members, alternates, observers, and successive changes, are contained in the reports of the TMB.

[30] For the continuation of the major review of the implementation of the ATC, see paragraphs 592 to 594 below.
[31] See also G/L/459, paragraphs 500 to 503.
[32] See G/C/W/260/Rev.1.
[33] For the continuation of the CTG's consideration of this issue, see paragraph 596 below.
[34] See WT/L/443.

PART THREE: IMPLEMENTATION OF THE ATC DURING THE THIRD STAGE OF THE INTEGRATION PROCESS

I. INTEGRATION

45. As already indicated[35], the ATC provides for a transition period of ten years, during which the textiles and clothing sector has to be progressively integrated into GATT 1994. The products constituting the textiles and clothing sector for the purpose of the implementation of the ATC are listed in the detailed Annex to the Agreement. This Annex, specifying each product at the six-digit level of the Harmonized Commodity Description and Coding System (HS) Nomenclature, includes all textile and clothing products that were subject to MFA or MFA-type restrictions in at least one importing Member during the period when the ATC was negotiated.

46. In the context of the ATC, the notion of integrating a product or a group of products into GATT 1994 means that trade in such a product or group of products is removed from the application of the ATC and becomes solely governed by the general rules and disciplines embodied in GATT 1994. In other words, once a product falling under the coverage of the ATC is integrated by a Member, that Member's trade in the given product with other WTO Members becomes subject to the normal GATT rules. This implies, *inter alia*, that measures inconsistent with GATT 1994 (such as discriminatory quantitative restrictions) that could be maintained by the Member concerned on trade in such a product during the pre-ATC period and, also, could be taken over to the ATC regime, can no longer be applied; they have to be eliminated as a result and on the date of integration.

47. The above highlights that the integration process is the main pillar of ATC implementation, since it provides the vehicle for bringing international trade in textile and clothing products under the general rules and disciplines of GATT 1994. The rules and requirements governing integration are defined in Articles 2.6 to 2.11. Integration has to be formally implemented by all WTO Members, even if they did not apply restrictions under the pre-ATC regime and, therefore, did not carry over such restrictions to the ATC. Integration is a progressive, staged process, unless, pursuant to the provisions of Article 6.1, Members specifically renounced the right to use the transitional safeguard mechanism (Article 6) of the ATC, in which case they are deemed to have already integrated, at the very beginning of the transitional period, all the products covered by the ATC into GATT 1994 (Article 2.9). For all other Members, integration takes place, as a main rule, in four stages: on 1 January 1995 (Stage 1), 1 January 1998 (Stage 2), 1 January 2002 (Stage 3) and 1 January 2005 (full integration).[36] Article 2.10 makes it clear, however, that the firm establishment of the dates of the four successive stages does not preclude the possibility of integrating products earlier than provided for in an integration programme applicable to any of these stages.

48. The choice of products to be integrated in any of the stages has been left to the Members, within the parameters defined by the respective provisions of the ATC. Accordingly, integration programmes that were implemented during the first three stages had to meet the following two basic requirements:

- they had to include products which accounted for not less than a specific percentage (16 per cent in Stage 1; 17 per cent in Stage 2 and 18 per cent in Stage 3) of the total volume of the respective Member's 1990 imports of the products covered by the ATC;

- they also had to include, for each stage, products from each of the four main product groups (i.e. tops and yarns, fabrics, made-up textile products and clothing).

[35] See paragraph 10 above.
[36] *Idem*.

In addition, the respective programmes of integration had to be notified in detail to the TMB within the deadlines specified for that purpose. Once received, the integration programmes were circulated by the TMB, without delay, to all Members and were reviewed by the Body in conformity with the relevant provisions of the ATC.

49. On 1 January 2005, i.e. on the date of full integration of the entire sector, Members shall integrate into GATT 1994 all those products falling under the coverage of the ATC which had not yet been integrated by them during Stages 1, 2 and 3. Also, Members were supposed to provide, at the latest by 1 January 2004, a notification to the TMB regarding their respective last stage integration programmes.

50. Under the ATC, the technical requirements, in broad terms, are the same in respect of all Members which notified and implemented integration programmes for the first three stages. However, a distinction can be made between Members that notified restrictions with reference to the provisions of Article 2.1 and those Members that only retained the right to use the provisions of the transitional safeguard mechanism as specified in Article 6. Such a distinction is also recognized in Article 2.7, whereby Members carrying over MFA or MFA-type restrictions to the ATC are referred to in Article 2.7(a), while other Members are referred to in Article 2.7(b). The TMB has already observed both in its first and second comprehensive reports[37] that this distinction between Members is important from two interrelated points of view:

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

In the case of Members that notified restrictions to be maintained under the ATC, with reference to its Article 2.1, the integration of a product into GATT 1994 has essentially two consequences: first, any quantitative restriction maintained on such a product under the ATC is, by virtue of integration, eliminated; second, if the product is not subject to a restraint, since it is removed from the application of the ATC, the transitional safeguard mechanism cannot be invoked any more with respect to imports of such a product. For all other Members that implement integration programmes under the ATC, the effect of integration is to remove, with respect to the products integrated, the possibility of having recourse to the transitional safeguard mechanism. Since integration *ipso facto* removes restrictions maintained under the ATC, the effect of having selected products for integration can be significantly different for the two groups of Members defined above.

51. Stages 1 and 2 integration programmes and their respective implementation were dealt with in detail in the first and second comprehensive reports adopted by the TMB.[38] Similarly, since the notification by Members of their respective integration programmes to be implemented for Stage 3 was required at the latest by 1 January 2001, (i.e. during the period of implementation of the second stage of the integration process), the TMB's second comprehensive report included detailed factual information also on the Stage 3 integration programmes and provided an assessment of them.[39] Related further developments that still occurred during the period of implementation of the second stage of the integration process and subsequent to the adoption of the TMB's second comprehensive report, are summarized in Part Two of the present report.[40]

52. Also in light of the above, in the context of the implementation of the ATC during the third stage of the integration process, the following issues need to be addressed, for the purpose of the present report, with respect to integration:

[37] See G/L/179, paragraphs 66 and 67; G/L/459, paragraph 12.
[38] See G/L/179, paragraphs 9 to 77 and G/L/459, paragraphs 10 to 78.
[39] See G/L/459, paragraphs 79 to 114 and paragraphs 675 to 681.
[40] See paragraphs 15 to 18 above.

- implementation by Members of their respective Stage 3 integration programmes, including further developments that occurred during the period starting on 1 January 2002, as well as an updated assessment of these integration programmes;

- in addition to Stage 3 integration, implementation also of Stages 1 and 2 integration programmes during the period covered by this report in relation to newly acceded Members and, if applicable, also by the new Members themselves;

- the final stage of integration to be implemented on 1 January 2005 (regarding which notifications by Members were due to be received at least 12 months before its coming into effect).

A. IMPLEMENTATION OF INTEGRATION PROGRAMMES DURING STAGE 3

1. Members referred to in Article 2.7(a) that continue to maintain restrictions under the provisions of Article 2

53. It is to be recalled that the Members that had maintained restrictions under the MFA, had to notify, pursuant to Articles 2.6 and 2.7(a), their respective first stage integration programmes no later than 1 October 1994.[41] Canada, the European Communities, Norway and the United States provided notifications under these provisions within the deadline prescribed. Subsequently, during the implementation of Stage 2 of the integration process and invoking the provisions of Article 2.15 regarding the elimination of restrictions (without integrating the products concerned into GATT 1994), Norway, eliminated in four steps (on 1 January 1996, 1 January 1998, 1 January 1999 and 1 January 2001) all the restrictions it had maintained under Article 2.[42] Therefore, for Norway the potential effect of integrating products during the period starting 1 January 2001 has been the same as in the case of Members referred to in Article 2.7(b) that retained the right to use the provisions of Article 6. In light of this, a more detailed examination of the impact of the integration implemented in Stage 3 by Norway is not warranted. It should be noted that Norway reported that it had integrated in this Stage 21.65 per cent of the total volume of its imports in 1990 of the products falling under the coverage of the ATC (of which: tops and yarns – 2.73 per cent; fabrics – 6.27 per cent; made-up textile products – 5.09 per cent, clothing – 7.57 per cent.)[43]

(a) Stage 3 integration programmes and their implementation

54. During the first half of 2001, the TMB reviewed the respective integration programmes for Stage 3 as notified and, if applicable, subsequently corrected and supplemented, by Canada, the European Communities and the United States. In reviewing these integration programmes, the TMB noted that, in accordance with the requirements of Article 2.8(b), the volume of products to be integrated, as from 1 January 2002, by Canada, the European Communities and the United States amounted to at least 18 per cent of the volume of the respective Member's total imports of 1990 of the products falling under the coverage of the ATC. It could also be ascertained that products from each of the four groups, referred to in Article 2.8(b), would be integrated by each of these Members. Furthermore, since these programmes had to be implemented on 1 January 2002, i.e. on the date of commencement of the third stage of the integration process, it seems to be appropriate to reiterate some of the relevant features characterizing the respective programmes as they could be established and noted by the TMB at the time it could complete their review during the first half of 2001.

[41]This deadline was defined in the respective decision taken by Ministers in Marrakesh on 15 April 1994.

[42] See G/L/459, paragraphs 255 and 261 to 264.

[43] *Idem*, paragraph 84.

55. Canada reported that, in accordance with Article 2.8(b), the volume of imports to be integrated amounted to 18.16 per cent of the total volume of imports into Canada in 1990 of the products falling under the coverage of the Agreement. Products from each of the four groups referred to in Article 2.8(b) would be integrated, which would represent the following percentages of the volume of imports in 1990 in Canada: tops and yarns (5.51 per cent), fabrics (1.05 per cent), made-up textile products (7.77 per cent) and clothing (3.83 per cent). The TMB noted that Canada would integrate products from ten Canadian categories, 16 sub-categories, as well as eight products not attributed by Canada to a specific category. The TMB further noted that, of these, three categories and two sub-categories, for which Canada maintained restrictions under Article 2.1, would be integrated in full and that, therefore, restrictions affecting such categories or sub-categories would be eliminated. In a number of other cases, however, such categories were part of merged categories and/or sub-categories subject to restraint and, in these cases, the restrictions would only be partially eliminated, affecting overall 20 WTO Members, since the non-integrated parts of the merged categories and/or sub-categories would remain under restraint. In addition, products from 17 other categories or sub-categories would be integrated for which restrictions would be only partially eliminated, affecting overall 27 WTO Members. The TMB also took note of the statement by Canada that when a product or a category would be integrated that represented only part of a restrained category, merged category or sub-category, the level for the respective remaining restraints (category, merged category or sub-category) would not be reduced to reflect the removal of these products from the restriction.[44]

56. The European Communities reported that, in accordance with Article 2.8(b), the volume of imports to be integrated amounted to 18.08 per cent of the total volume of imports into the European Communities in 1990 of the products falling under the coverage of the Agreement. Products from each of the four groups referred to in Article 2.8(b) would be integrated, representing the following percentages of the volume of imports in 1990 in the European Community: tops and yarns (3.82 per cent), fabrics (3.60 per cent), made-up textile products (4.44 per cent) and clothing (6.22 per cent). The TMB noted that the European Communities would integrate 57 EC product categories, of which 16 of tops and yarns, 14 of fabrics, 18 of made-up textile products and nine of clothing. In addition, the European Communities would integrate four made-up textile products which are not classified in any specific EC product category. The TMB further noted that 11 EC categories, for which the European Communities maintained restrictions under Article 2.1, had been included in the integration programme and that, therefore, such restrictions would be eliminated on 1 January 2002. Restraints on these 11 EC categories affected overall nine WTO Members.[45]

57. In its notification the United States reported that the volume of imports to be integrated amounted to 18.11 per cent of the total volume of imports into the United States in 1990 of the products falling under the coverage of the Agreement. Products from each of the four groups referred to in Article 2.8(b) would be integrated, and would represent the following percentages of the volume of imports in 1990 in the United States: tops and yarns (3.26 per cent), fabrics (3.91 per cent), made-up textile products (8.40 per cent) and clothing (2.55 per cent). The TMB noted that the United States would integrate products from 41 US categories, of which four of tops and yarns, five of fabrics, eight of made-up textile products and 24 of clothing. The TMB further noted that products from 38 US categories, for which the United States maintained restrictions under Article 2.1, had been included in the integration programme and that, therefore, restrictions affecting such products would be eliminated on 1 January 2002. Restraints on these products affected overall 20 WTO Members. Some of the restraints would be fully eliminated because they constituted specific limits covering single or merged categories which would be integrated in their entirety. In a number of other cases, products included in the programme of integration formed only part of product categories, therefore, restrictions affecting such categories would be only partially eliminated. In several other cases, the category integrated was, prior to its integration, subject to a quantitative restriction because, although

[44] See G/L/459, paragraph 82.
[45] *Idem*, paragraph 83.

the category itself was not under specific limit, it fell under an aggregate or group limit. As to the consequences of the integration of the products listed as imports into the United States of products forming only part of a category or subject to group or aggregate limits, the TMB noted the US' statement that the United States "[would] be in contact with [its] textiles agreement partners during the course of this year [i.e. 2001], concerning the effects of integration in the year 2002 on specific, group and aggregate limits. Adjustment to limits [would] be based on trade that has occurred in the products to be integrated, and [the United States'] agreements partners [would] be given the opportunity to consult with [the United States] on this issue". In this regard, the TMB recalled that, in conformity with the provisions of Article 4, any change in the level of such restrictions shall not adversely affect the access available to a Member and upset the balance of rights and obligations of the Members concerned under the ATC. The TMB observed that the products integrated were subject, prior to their integration, to visa requirements, and sought confirmation that no visa requirements would be applied to any of the products integrated into GATT 1994 as a result of the Stage 3 integration programme as from 1 January 2002. The United States stated in this regard that "a decision [would] be made later this year [i.e. 2001] after consultation with our bilateral textile visa arrangement partners, as to whether or not a visa requirement [would] be retained for goods exported in 2002 that were integrated in that year". The TMB recalled that the respective visa arrangements had been notified to the TMB by the United States, pursuant to Article 2.17, as parts of administrative arrangements and that, under Article 2.17, administrative arrangements could only be deemed necessary in relation to the implementation of restrictions applied under Article 2. The TMB further recalled that, in June 1998, several WTO Members had requested the TMB to review, in accordance with Articles 8.1 and 2.21, the implementation of the US' Stage 2 integration programme with respect to the continuation of visa requirements for products included in this programme. In that context, the TMB had, *inter alia*, taken note of a communication by the United States that, as a definitive response to the issues raised "without conceding its right to maintain such measures, the United States […] would eliminate visa requirements with respect to products integrated in Stage 2, without condition and as soon as practicable, but in any event no later than 31 December 1998". It was the TMB's understanding that such elimination of visa requirements would be effected on a MFN basis. Subsequently, the United States had forwarded to the TMB, for its information, a US Federal Register Notice "eliminating the visa requirements for various textile categories, consistent with the TMB's decision on this matter". Against this background, the TMB expected that it would be informed as soon as possible of any follow-up considerations to be given to this matter by the United States.[46]

58. In conformity with the provisions of Article 2.8(b), the third stage of integration had to be implemented on 1 January 2002. Following the provisions of Article 2.21, the TMB is required to keep under review the implementation of Article 2 which deals, *inter alia*, with the integration process. The TMB's mandate in this regard has been and continues to be accomplished by reviewing any relevant particular matter referred to it by any Member and by also relying on any relevant communication or information that can be brought to the TMB's attention. Since no communication or information has been received regarding this matter, the TMB assumes that the respective Stage 3 integration programmes, as notified and reviewed, were implemented on schedule by Canada, the European Communities and the United States. It is important to note also in this context that prior to the implementation of its integration programme, the United States informed the TMB (in reply to the request for information made by the Body[47]) that the United States had eliminated the visa requirement for products integrated in the third stage.[48] As this was the only communication received by the TMB and the only piece of information brought to its attention regarding matters related to the implementation of the respective integration programmes in a broader sense, it can also be assumed that none of the Members maintaining restrictions under Article 2.1 continued to apply the provisions of its respective administrative arrangements agreed with other Members pursuant to Article 2.17 with respect to products integrated during Stage 3. This, in turn, implies that the Members concerned had

[46] See G/L/459, paragraph 85.
[47] See paragraph 57 above.
[48] See also paragraph 18 above.

effectively implemented integration by removing the products included in the Stage 3 integration programmes from the application of any of the provisions of the ATC. Finally, as far as the implications of the enlargement on 1 May 2004 of the European Communities on the integration programmes are concerned, these aspects are briefly addressed in paragraphs 61 and 81 below.

(b) Implementation of integration programmes in relation to newly acceded Members

59. The accession of two new Members to the WTO took effect shortly prior to the implementation of Stage 3 integration or on the day of this implementation. China became a Member on 11 December 2001; the membership of Chinese Taipei took effect on 1 January 2002. As a result of these accessions, the Stage 3 implementation programmes had to be implemented *vis-à-vis* China and Chinese Taipei on the same day (i.e. on 1 January 2002) as in relation to any other Member. The Former Yugoslav Republic of Macedonia (FYROM) joined the WTO on 4 April 2003, hence it became entitled to benefit from integration on that day.

60. As indicated earlier, once a product becomes integrated, it is taken out of the scope of application of the ATC and becomes subject to the general rules and disciplines of GATT 1994. Since trade in integrated products is not governed any more by the ATC (and, more specifically, restrictions cannot be maintained on such products under Article 2), integration programmes that were implemented prior to the accession of a new Member, have to be extended to the newly acceded Member as well. Therefore Stages 1, 2 and 3 integration programmes had to be implemented practically in one step by the Members concerned in relation to China, Chinese Taipei and the FYROM, respectively. Canada, the European Communities and the United States complied with their respective obligations in this regard. It is important to note that the implementation by these Members of the integration programmes of the three successive stages *vis-à-vis*, respectively, China and Chinese Taipei, resulted in the elimination of a number of quantitative restrictions previously maintained.[49]

(c) Issues relevant to the integration programmes implemented by the European Communities, following its enlargement on 1 May 2004

61. In a communication sent to the TMB in response to questions put by the Body in the context of the examination of a communication received from several TMB members requesting the TMB to review the "[i]ntroduction by the European Union of quota restrictions in the markets of ten newly acceding States, Members of the WTO", the European Communities stated, *inter alia*, that "[a]s from 1 May 2004, the European Union includes ten new member States. The Act of Accession establishes in Article 6(7) that the new member States must apply the common trade policy concerning textiles and that the already existing quantitative restrictions applied by the Community on imports of textile and clothing products are to be adjusted to take account of the accession of the new member States to the Community."[50] Also in light of this statement, it would appear that the new member States of the European Communities have taken over the EC's integration programmes implemented during Stages 1, 2 and 3. It should be noted, however, that the European Communities has not provided a specific notification to the TMB in this regard.

(d) No recourse to the provisions of Article 2.10 (advanced or earlier integration)

62. Article 2.10 provides that "[n]othing in this Agreement shall prevent a Member that has submitted an integration programme pursuant to paragraphs 6 or 8 [of Article 2] from integrating products into GATT 1994 earlier than provided for in such a programme." It is worthwhile recalling that the Decision adopted by the Ministerial Conference in Doha (on 14 November 2001) states, *inter alia*, the following: "The Ministerial Conference [...] agrees [...] that the provisions of [the ATC]

[49] See paragraphs 100 and 101, 106 to 108, 115 and 116, 118, 121, 122 and 124 below.
[50] See paragraph 325 below.

relating to the early integration of products [...] should be effectively utilized."[51] During the major review conducted by the Council for Trade in Goods on the implementation of the ATC in the second stage of the integration process, the exchange of views among Members addressed issues related to this provision of the ATC as well. The report adopted by the Council at the end of the review makes reference to the Decision of the Ministerial Conference "containing a section which pertained to some of the subjects being discussed in the major review" and, in a related footnote, reproduces the full text of the decision dealing with the ATC (including the language relating to early integration).[52] It should also be mentioned that in its second comprehensive report submitted to the Council for Trade in Goods, the TMB expressed the view that "measures can be taken during the third stage of the integration process under the relevant provisions of Article 2, resulting in increased opportunities for exports in products still subject to restraints. Also in view of [this], the TMB recommends [...] that the Council [...] invite the Members concerned to have recourse, whenever possible, to the provisions of Article 2.10 (advanced integration) [...] during the period of implementation of the third stage of the integration process."[53]

63. Also against the background, as above, it has to be noted that during the implementation of the third stage of the integration process, the TMB has not received any notification with reference to Article 2.10 from any of the Members maintaining restrictions under Article 2.1. This means that the coverage of products integrated during Stage 3 by Canada, the European Communities and the United Stages has not been enlarged; it has remained the same as notified and subsequently implemented on 1 January 2002.

2. Members retaining the right to use the provisions of Article 6

(a) Stage 3 integration programmes notified prior to 1 January 2002

64. By the end of December 2001, i.e. prior to the implementation of Stage 3 of the integration process on 1 January 2002, of the 47 Members that had retained the right to use the provisions of Article 6 and had notified integration programmes both for Stages 1 and 2, 39 provided integration programmes to be implemented during Stage 3, several of them after the expiration of the deadline specified in Article 2.11. At that time, no Stage 3 integration programmes had been received from 8 of the 47 Members referred to above (namely from Bangladesh, Egypt, Honduras, Israel, Malaysia, Saint Kitts and Nevis, South Africa and Venezuela).

65. Also by the end of December 2001, the TMB was in a position to conclude the review, pursuant to Article 2.21, of 33 notifications out of the 39 integration programmes received. Pakistan notified that it had decided to integrate its entire textiles sector as part of the Stage 3 integration and, accordingly, the whole of the textiles and clothing sector would be henceforth governed by the rules of GATT 1994.[54] The TMB commended Pakistan for this decision. In the case of the other 32 notifications (Argentina, Brazil, Colombia, Costa Rica, Cyprus, Czech Republic, Dominican Republic, El Salvador, Estonia, Hungary, India, Indonesia, Japan, Korea, Latvia, Liechtenstein, Lithuania, Malta, Mauritius, Morocco, Panama, Peru, the Philippines, Poland, Romania, Slovenia, Sri Lanka, Switzerland, Thailand, Tunisia, Turkey and Uruguay), the TMB noted that, in each case, the products to be integrated amounted to at least 18 per cent of the respective Member's total imports falling under the coverage of the ATC (in most cases, in volume of the 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) would be integrated.

[51] Paragraph 4.1 of the Decision adopted by the Ministerial Conference (WT/MIN(01)/17). See also paragraphs 41 above and 585 below.
[52] See G/C/W/396, paragraph 30 and related footnote.
[53] See G/L/459, paragraphs 681 and 682.
[54] See G/L/459, paragraph 88.

66. In addition, as regards Turkey, it is appropriate to recall that in December 1996, Turkey notified with reference to Article 2.10 that it had decided to bring forward the implementation of the integration of some products, which would otherwise form part of the third stage of integration, to take effect on 1 January 1998. These products represented 29.07 per cent of the volume of Turkey's total imports in 1990. The notification of Turkey stated, *inter alia*, that "by the integration of the products included in the notification by Turkey of the second stage of integration pursuant to paragraphs 8(a) and 11 of Article 2 of the Agreement on Textiles and Clothing, together with the products included in this notification, Turkey and the European Community, which form a customs union, will continue to apply the same duties and other regulations of commerce to the trade of territories not included in the union in respect of products covered by the Agreement on Textiles and Clothing".[55] This statement also explains why the Stage 3 integration programme of Turkey, while presented in a slightly different structure, was very much similar to that notified by the European Communities.

67. Similar to what had been done with respect to the notifications made pursuant to Articles 2.6 and 2.8(a), 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(b). 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 had been available, and verified that the basis of the data for each Member was the same as that used for its first and second stages of integration. Their respective stages of integration would, therefore, be implemented in a consistent manner.[56]

68. With respect to notifications addressed to the TMB after the expiration of the relevant deadline defined by Article 2.11, the TMB reiterated that its taking note of late notifications was without prejudice to the legal status of such notifications.

69. The review by the TMB of six notifications of Stage 3 integration programmes (Bolivia, Guatemala, Mexico, Nicaragua, Paraguay and the Slovak Republic) could not be completed by the end of 2001, since satisfactory replies had not yet been received from them to the specific questions raised and clarifications sought by the TMB.

(b) Developments during the period of implementation of Stage 3

70. Since 1 January 2002, i.e. the date of implementation of Stage 3 of the integration process, the TMB could complete the review of some of the integration programmes whose review was pending. In addition, a few new notifications have been received and also reviewed. Also, two newly acceded Members submitted notifications regarding their respective integration programmes. The enlargement of the European Communities on 1 May 2004 had also affected the respective integration programmes notified by some of the ten new member States.

(i) Follow-up to certain notifications whose review was pending

71. Of the six Members listed in paragraph 69 above, the Slovak Republic and Guatemala provided responses (respectively, in January and February 2002) to the questions raised and clarifications sought by the TMB with respect to their Stage 3 integration programmes. During its meeting of February 2002, the TMB, observing that the clarifications it had sought from Bolivia, Mexico, Nicaragua and Paraguay with respect to their notifications pursuant to Articles 2.8(b) and 2.11 had not as yet been received, decided to reiterate its requests, in view of the fact that the respective programmes of integration had to be implemented already as from 1 January 2002.

[55] See G/L/459, paragraphs 71 and 72.
[56] See G/L/459, paragraphs 86 to 91 and also paragraphs 16 to 17 of the present report.

Subsequently, additional notifications were received from Paraguay (in April 2002) and Bolivia (in March 2003).

72. On the basis of the clarifications received from the Members concerned with respect to different technical aspects of their respective notifications, the TMB could conclude the review of the Stage 3 integration programmes of Guatemala, Paraguay and the Slovak Republic. The TMB noted that in each of the three cases the products integrated in Stage 3 amounted to at least 18 per cent of the respective Member's total volume of 1990 (for the Slovak Republic: 1993) imports of the products covered by the ATC and, that products from each of the four groups (tops and yarns, fabrics, made-up textile products and clothing) had been included in the relevant integration programmes.

73. The additional notification received from Bolivia requested the replacement of certain tariff headings included in the Stage 3 integration programme as initially notified by another tariff heading. Noting that this additional notification was not sufficiently specific regarding certain technical aspects involved, the TMB decided to seek clarification from Bolivia on these matters. Since no further communication has been received from Bolivia, the TMB has not been in a position to conclude the review of Bolivia's Stage 3 integration programme.

(ii) New notifications received with reference to Articles 2.8(b) and 2.11

74. During the implementation of Stage 3 of the integration process, notifications were received with reference to Articles 2.8(b) and 2.11 from Honduras (in January 2002), Egypt (in April 2002) and Venezuela (in April and July 2002). In reviewing these notifications under Article 2.21, the TMB noted that each of them met the basic requirements defined in Article 2.8(b): the products integrated amounted to at least 18 per cent of the respective Member's total volume of 1990 imports and included products from each of the four product groups.

(iii) Notifications received from newly acceded Members

75. At its meeting of January 2002, the TMB took note of the notification made by China, pursuant to Article 6.1, that it wished to retain the right to use the transitional safeguard mechanism during the transition period of the ATC. At its meeting of February 2002, the TMB took note of the notification made by Chinese Taipei, pursuant to Article 6.1, that it wished to retain the right to use the transitional safeguard mechanism during the transition period of the Agreement. Since both notifications were addressed to the TMB during the period of implementation of Stage 3 of the integration process, the Members concerned had to notify integration programmes for the respective three stages and had to implement them practically in one step.

76. China provided separate notifications, with reference to Articles 2.6 and 2.7(b), 2.8(a) and 2.11, as well as 2.8(b) and 2.11, whose review was started by the TMB during its meeting of April 2002. On that occasion, the TMB decided to seek clarifications from China regarding certain aspects of its notifications. China submitted additional information in response to the questions put by the TMB. Having examined the response provided, in May 2002 the Body decided to seek further clarifications from the notifying Member. The same decision was taken in June 2002 when the TMB reverted to its review of the notifications made by China, also on the basis of further additional information submitted by it in response to the TMB's questions. At its meeting of July 2002, the TMB could conclude the review, under Article 2.21, of the notifications made by China regarding its Stages 1, 2 and 3 integration programmes. During its review the TMB noted that, in accordance with Articles 2.6, 2.8(a) and 2.8(b), the products integrated amounted respectively to 20.79, 17.07 and 18.10 per cent of the volume of imports in 1992 of the products falling under the coverage of the Agreement. The TMB also noted that, in accordance with Articles 2.6, 2.8(a) and 2.8(b), the products integrated for each stage included products from each of the four groups: tops and yarns, fabrics, made-up textile products and clothing. With regard to the fact that the calculation of the share of the products to be integrated had been made on the basis of imports in 1992, the TMB noted the statement

by China that this was the first year for which data were available on the basis of the Harmonized System.

77. Chinese Taipei submitted notifications pursuant to Article 2.6 and 2.7(b), 2.8(a) and 2.11, and 2.8(b) and 2.11 in February 2002. At its meeting of February 2002, the TMB started their review and decided to seek clarification from Chinese Taipei as to whether (i) some of the products included of the respective integration programmes fell under the coverage of the ATC and (ii) the imports that had been counted in respect of products belonging to HS lines in the Annex to the ATC for which only part of the respective lines fall under the coverage of the ATC ("ex-HS lines") corresponded precisely to the product description contained in the ATC Annex. The TMB continued the review of these notifications during its meeting of April 2002, also on the basis of additional information received from Chinese Taipei in response to the questions put by the Body. Having examined the additional information, the TMB was of the view that certain aspects remained unanswered and, therefore, not sufficiently clear. On this basis, the Body decided to seek further clarifications from the notifying Member. Since no follow-up communication has been received from Chinese Taipei, the TMB has not been able to conclude the review of the integration programmes notified by Chinese Taipei for Stages 1, 2 and 3.

(iv) Observations with respect to late notifications

78. With respect to notifications addressed to the TMB after the relevant deadlines, the TMB reiterated in each case that its taking note of late notifications was without prejudice to the legal status of such notifications.

(v) Implementation of integration programmes during Stage 3

79. Since no communication has been received raising doubts in this regard, the TMB assumes that the Stage 3 integration programmes (or if applicable, the Stages 1, 2 and 3 integration programmes) notified to the Body were implemented on 1 January 2002, or, in those cases when the notifications had been made after 1 January 2002, at the latest on the date of the submission of such notifications (or, if applicable, of their revised versions on the basis of which the TMB could conclude the review of such notifications).

80. As indicated earlier, one Member (Pakistan) decided to integrate its entire textiles and clothing sector as part of the Stage 3 integration.[57] In that sense, Pakistan relied also on the provisions of Article 2.10 regarding advanced or earlier integration. No other Member that had retained the right to use the provisions of Article 6, has invoked the provisions of Article 2.10 during the implementation of the third stage of the integration process. It is noteworthy that of these Members, only one has had recourse to the transitional safeguard mechanism during the third stage of the integration process.[58]

(vi) Issues arising from the enlargement of the European Communities, affecting integration programmes previously notified

81. As indicated in paragraph 61 above, it would appear that on 1 May 2004 the ten new member States of the European Communities took over the EC's integration programmes implemented during Stages 1, 2 and 3. Though no specific notification has been addressed to the TMB regarding this matter either by the EC or by its new member States, it would also appear that while for some of the new EC member States this action has not brought about any changes, since their respective integration programmes were identical to those notified by the EC, in the case of some others this has not been the case. The TMB observes that such changes are not contemplated in the respective

[57] See paragraph 65 above.
[58] See paragraphs 429 to 436 below.

provisions of Article 2 and that, furthermore, under the ATC, products that have been integrated into GATT 1994 cannot be brought back again under the provisions of the Agreement.

B. NOTIFICATIONS PURSUANT TO ARTICLE 2.8(C) AND 2.11

82. According to the provisions of Article 2.8(c), "[t]he remaining products, i.e. the products not integrated into GATT 1994 [...], shall be integrated, in terms of HS lines or categories [...], as follows: [...] on the first day of the 121st month that the WTO Agreement is in effect, the textiles and clothing sector shall stand integrated into GATT 1994, all restrictions under this Agreement having been eliminated." Article 2.11 provides that "[t]he respective programmes of integration, in pursuance of paragraph 8 [of Article 2], shall be notified in detail to the TMB at least 12 months before their coming into effect, and circulated by the TMB to all Members."

83. As indicated earlier[59], the first day of the 121st month that the WTO Agreement will be in effect is 1 January 2005. On this day:

- the fourth (and final) stage of integration shall be implemented ;
- as a result, the entire textiles and clothing sector shall become fully integrated into GATT 1994;
- also, the transition period of ten years expires, and the ATC and restrictions thereunder shall stand terminated.

84. Pursuant to the provisions of Article 2.11, notifications by Members regarding the final stage of integration were due to be received at least 12 months before the date of implementation, i.e. at the latest by 1 January 2004. Only one Member provided a notification within the time-frame specified in Article 2.11. Japan submitted the detailed list of textile and clothing products to be integrated by it on 1 January 2005. The TMB reviewed this notification at its meeting of January 2004. During its review, the TMB verified that on 1 January 2005 the total volume of Japan's 1990 imports of the products in the Annex to the ATC would be integrated into GATT 1994, which confirmed the Body's understanding that, in accordance with Article 2.8(c), all the products not yet integrated by Japan into GATT 1994 under Articles 2.6, 2.8(a) and 2.8(b) were included in the list of the products that would be integrated into GATT 1994 on 1 January 2005. The TMB commended Japan for its timely notification.

85. In the context of this review, the TMB, recalling the provisions of Articles 2.8(c) and 2.11, observed that up until its January 2004 meeting only Japan had provided a notification pursuant to these provisions. The TMB decided to remind Members of the notification requirement contained in the Articles referred to above.[60] It observed in this respect that those Members that had notified, pursuant to Article 6.1, their intention not to retain the right to use the provisions of Article 6 were, in accordance with Article 2.9, deemed to have integrated their textiles and clothing products into GATT 1994 and were, therefore, exempted from complying with the provisions of paragraphs 6 to 8 and 11 of Article 2. It was also observed that, irrespective of the unambiguous commitments defined in Article 2.8(c) and also in Article 9 regarding the full integration on 1 January 2005 of the entire textiles and clothing sector into GATT 1994, compliance with the respective notification requirement, in particular by Members maintaining restrictions under the provisions of the ATC, would contribute to the faithful implementation of the ATC.

86. Subsequently, notifications were received from three Members (Canada, China and the United States) which were examined by the TMB at its meeting of February 2004. Canada notified

[59] See paragraphs 10 and 47 above.
[60] See G/TMB/29.

that "on 1 January 2005, Canada will integrate into GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC. On this date, Canada will eliminate all remaining restrictions under the ATC on such products, and Canada will have integrated into GATT 1994 all products listed in the Annex of the ATC." China stated that "pursuant to Article 2.8(c) of the Agreement on Textiles and Clothing, China will integrate all the remaining products not covered by China's first, second and third integration programmes into GATT 1994 on 1 January 2005." The United States for its part notified that "on 1 January 2005 the United States will integrate into GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC. On this date, the United States will eliminate all remaining restrictions under the ATC on such products, and the United States will have integrated into GATT 1994 all products listed in the Annex to the ATC."

87. In reviewing these notifications under Article 2.21, the TMB noted that the three Members confirmed that on the first day of the 121st month that the WTO Agreement would be in effect, their respective textiles and clothing sector would be integrated into GATT 1994. The TMB, noticing that the three Members had not provided a detailed list of the products that would, in effect, be integrated on 1 January 2005, observed that, in order to inject the necessary transparency in the implementation of the ATC, it would be useful to provide such a detailed list of the products to be integrated on 1 January 2005 and invited all Members concerned to provide such a list. The TMB recalled, furthermore, that it had already reminded Members of the notification requirements contained in Articles 2.8(c) and 2.11.

88. The TMB noted, furthermore, that in their respective notifications, both Canada and the United States had stated specifically that on the date of full integration, i.e. on 1 January 2005, all remaining restrictions under the ATC would be eliminated. The TMB observed that these reaffirmations were fully in line with the provisions of Articles 2.8(c) and 9. It was also recalled that the quantitative restrictions maintained under Article 2 of the ATC were being implemented through additional procedures, such as the administrative arrangements agreed between Members under Article 2.17. The TMB recalled that these administrative arrangements could only be deemed necessary in relation to the implementation of restrictions applied under the ATC. Therefore, with the elimination of all quantitative restrictions under the ATC, all related administrative procedures and measures, including those specified in the administrative arrangements notified pursuant to Article 2.17, shall also stand terminated.

89. The TMB received three further notifications (from the European Communities, India and Switzerland) which were reviewed at its meeting of March 2004. The European Communities stated that "on 1 January 2005, the European Community will integrate into GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC. On this date, the European Community will eliminate all remaining restrictions under the ATC on such products, and thus the European Community will have integrated into GATT 1994 all products listed in the Annex of the ATC". India notified that "pursuant to Article 2.8(c) of the Agreement on Textiles and Clothing, India will integrate all the remaining products of the Annex to the ATC – not covered by India's first, second and third stage integration programmes – into GATT 1994 on 1 January 2005". Switzerland stated that "on 1 January 2005 Switzerland will integrate into GATT 1994 all the remaining products not covered by its first, second and third integration programmes". For the sake of clarity, a detailed list of the products concerned was attached to the notification.

90. In reviewing these notifications under Article 2.21, the TMB noted that the three Members confirmed that on the first day of the 121st month that the WTO Agreement would be in effect their respective textiles and clothing sector would be integrated into GATT 1994. The TMB reiterated its earlier observation that in order to inject the necessary transparency into the implementation of the ATC, it would be useful to provide a detailed list of the products to be integrated on 1 January 2005.

Accordingly, the TMB had already invited all Members concerned to provide such a list. With regard to the notification submitted by Switzerland, the TMB verified on the basis of the detailed list provided that on 1 January 2005 the total volume of Switzerland's 1990 imports of the products in the Annex to the ATC would be integrated into GATT 1994, which confirmed the Body's understanding that, in accordance with Article 2.8(c), all the products not yet integrated by Switzerland into GATT 1994 under Articles 2.6, 2.8(a) and 2.8(b) were included in the list of the products that will be integrated into GATT 1994 on 1 January 2005.

91. As was already the case with respect to the notifications received from Canada and the United States, the TMB noted, furthermore, that in its notification, the European Communities had stated specifically that on the date of full integration, i.e. on 1 January 2005, it would eliminate all remaining restrictions under the ATC. The TMB observed that this reaffirmation was fully in line with the provisions of Articles 2.8(c) and 9. It was also recalled that the quantitative restrictions maintained under Article 2 of the ATC were being implemented through additional procedures, such as the administrative arrangements agreed between Members and notified under Article 2.17. The TMB recalled that these administrative arrangements could only be deemed necessary in relation to the implementation of restrictions applied under the ATC. Therefore, with the elimination of all quantitative restrictions under the ATC, all related administrative procedures and measures, including those specified in the administrative arrangements notified pursuant to Article 2.17, shall also stand terminated.

92. A further notification was received from Romania that was reviewed by the TMB at its meeting of April 2004. Romania notified that "[p]ursuant to Article 2 of the Agreement on Textiles and Clothing (ATC), starting with 1 January 2005, Romania will integrate into GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC". In reviewing this notification under Article 2.21, the TMB noted that Romania confirmed that on the first day of the 121st month the WTO Agreement would be in effect, its textiles and clothing sector shall be integrated into GATT 1994. The TMB reiterated its earlier observation that in order to inject the necessary transparency into the implementation of the ATC, it would be useful to provide a detailed list of the products to be integrated on 1 January 2005.

93. Three further notifications were received from Norway, Chinese Taipei and Brazil, which were examined by the TMB at its meeting of May 2004. Norway notified that "on 1 January 2005 [Norway] will integrate into GATT 1994 all textile and clothing products listed in the Annex to the ATC not integrated during the three earlier stages of integration. Thus Norway on 1 January 2005 will have integrated into GATT 1994 all the products listed in the Annex to the ATC." In its notification, Chinese Taipei stated that "[o]n 1 January 2005, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu will integrate into GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC. On this date, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu will eliminate all remaining restrictions under the ATC on such products, and thus will have integrated into GATT 1994 all products listed in the Annex of the ATC." A detailed list of the products concerned was attached to the notification. The notification of Brazil for its part stated that "[p]ursuant to Article 2 of the Agreement on Textiles and Clothing, […] on 1 January 2005, Brazil will integrate into GATT 1994 all the remaining textile and clothing products not covered by Brazil's first, second and third integration programmes." In reviewing these three notifications under Article 2.21, the TMB noted that the three Members confirmed that on the first day of the 121st month that the WTO Agreement would be in effect their respective textiles and clothing sectors would be integrated into GATT 1994. The TMB reiterated its earlier observation that in order to inject the necessary transparency into the implementation of the ATC, it would be useful to provide a detailed list of the products to be integrated on 1 January 2005. With regard to the notification submitted by Norway, the TMB recalled that Norway had already eliminated in four steps, pursuant to Article 2.15, all the restrictions it had notified with reference to Article 2.1.

Therefore, as of 1 January 2001 Norway did not maintain any restrictions on products falling under the coverage of the ATC. With regard to the notification submitted by Chinese Taipei, the TMB recalled that when it had begun to review the notifications made by Chinese Taipei pursuant to Articles 2.6 and 2.7(b), 2.8(a), 2.8(b) and 2.11 it had sought further clarifications from Chinese Taipei regarding its notifications (including further information provided in response to a first series of questions put by the TMB) . Since such further clarifications had not been received, the TMB had not been in a position to conclude the review of the notifications of Chinese Taipei's first, second and third stage integration programmes and to take note of them. The TMB observed, however, that despite this, the fact remained that, pursuant to 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. Therefore, the absence of the TMB's conclusion of the review of Chinese Taipei's integration programmes for the first three stages did not prevent the TMB from taking note of the same Member's notification regarding the final stage of integration. The TMB also noted that, according to the notification, Chinese Taipei "will eliminate all remaining restrictions under the ATC on [the] products [falling under the coverage of the Agreement]." It observed in this regard that Chinese Taipei had not notified any restrictions on such products under any of the provisions of the ATC.

94. Furthermore, two notifications were received from Turkey and Costa Rica and examined by the TMB at its meeting of 6 and 7 July 2004. Turkey notified that "on 1 January 2005, Turkey will integrate into the GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC. On this date, Turkey will eliminate all remaining restrictions under the ATC on such products, and thus Turkey will have integrated into the GATT 1994 all products listed in the Annex of the ATC." In its notification, Costa Rica stated that "on 1 January 2005, it will integrate into the GATT 1994 all of the textile and clothing products covered by the ATC that were not integrated during the first three stages of integration. As of that date, Costa Rica will have integrated into the GATT 1994 all of the products listed in the Annex to the ATC." In reviewing these two notifications under Article 2.21, the TMB noted that the two Members confirmed that on the first day of the 121st month that the WTO Agreement would be in effect their respective textiles and clothing sectors shall be integrated into GATT 1994. The TMB reiterated its earlier observation that in order to inject the necessary transparency into the implementation of the ATC, it would be useful to provide a detailed list of the products to be integrated on 1 January 2005. Accordingly, the TMB had already invited all Members concerned to provide such a list. The TMB noted, furthermore, that in its notification, Turkey had stated specifically that on the date of full integration, i.e. on 1 January 2005, it would eliminate all remaining restrictions under the ATC on such products, and thus Turkey will have integrated into the GATT 1994 all products listed in the Annex of the ATC. The TMB observed that this reaffirmation was fully in line with the provisions of Articles 2.8(c) and 9.

95. Also, a notification was received from Korea and examined by the TMB at its meeting on 21 July 2004. Korea notified that "on 1 January 2005, the Republic of Korea will integrate into the GATT 1994 all the remaining products listed in the Annex to the ATC which were not integrated during the first three stages of integration under the ATC." In reviewing this notification under Article 2.21, the TMB noted that Korea confirmed that on the first day of the 121st month that the WTO Agreement would be in effect its textiles and clothing sectors shall be integrated into GATT 1994. The TMB reiterated its earlier observation that in order to inject the necessary transparency into the implementation of the ATC, it would be useful to provide a detailed list of the products to be integrated on 1 January 2005. Accordingly, the TMB had already invited all Members concerned to provide such a list.

96. Of the 48 WTO Members who had notified an integration programme for Stage 3, 14 submitted a notification pursuant to the provisions of Articles 2.8(c) and 2.11. This includes all the Members which notified restrictions pursuant to Article 2.1.

C. FURTHER ASSESSMENT AND ADDITIONAL OBSERVATIONS BY THE TMB

1. Integration programmes implemented during Stage 3

(a) Members maintaining restrictions falling under Article 2.1

97. The second comprehensive report adopted by the TMB provided an overview of the integration programmes implemented, respectively, by Canada, the European Communities and the United States during Stages 1 and 2[61], as well as a more detailed examination, together with a number of observations, of the integration programmes notified by these Members for implementation in Stage 3.[62] The basic features of these Stage 3 programmes, as described in the second comprehensive report, and also the related observations made by the TMB have remained valid, all the more so, since, compared to the respective initial notifications, none of these Members has increased the coverage of products integrated during Stage 3. This statement notwithstanding, it is appropriate to provide an update to the assessments included in the second comprehensive report, since these assessments, in particular the examination of the potential impact of the Stage 3 integration programmes notified were based on the information that was available to the TMB at the time of the adoption (i.e. July 2001) of the report referred to above. Since then, new Members whose exports of products covered by the ATC were subject to restrictions prior to their membership, have acceded to the WTO. While most of these restrictions were carried over to the ATC regime, some of them had been eliminated as a result of integration implemented during Stage 3 by the restraining Members. Therefore, in order to assess properly the impact of the integration programmes implemented, respectively, by Canada, the European Communities and the United States, the examination of the effects of integration on imports from the newly acceded Members has to be included into the global analysis.

98. As mentioned earlier[63], China became a Member on 11 December 2001; Chinese Taipei on 1 January 2002 and the Former Yugoslav Republic of Macedonia (FYROM) on 4 April 2003. In this light, Stages 1 and 2 integration should have been implemented *vis-à-vis* China ideally on 11 December 2001, while Stage 3 integration on 1 January 2002. Given the date of the accession of Chinese Taipei, Stages 1, 2 and 3 integration programmes had to be implemented *vis-à-vis* it in one step, on 1 January 2002. Implementation in one step applied also to the case of FYROM, the date of implementation being 4 April 2003.

99. Furthermore, without prejudice to the legal justification, or the lack thereof, of the restrictions applied by Turkey[64], it is necessary to include the examination of the impact of Turkey's integration programmes into this updated assessment. Though the introduction and continued maintenance of restrictions by Turkey was notified under Article 3.3[65], the quantitative restrictions applied by Turkey affect the same products (product categories) in which the European Communities maintain restrictions notified under Article 2.1 (and, also, Article 3.1). Also, the restrictions affecting imports from two newly acceded Members were notified by Turkey with explicit reference to Article 2.1 (and, if applicable, also Article 3.1).

(i) Canada

100. Canada reported that it had eliminated before 11 December 2001 the quantitative restrictions on imports from China of the products integrated during the first two stages of integration. On the

[61] See G/L/459, paragraphs 15 to 19; 31 to 35; 37 and 38; 47 and 48; 50 and 51; 53 to 63; 74 to 78.
[62] *Idem*, paragraphs 81 to 83; 85; 93 to 105; 108 to 113 and 676 to 681.
[63] See paragraph 59 above.
[64] See paragraphs 420 and 421 below.
[65] See paragraphs 408 to 410 below.

basis of analysing the respective notifications made by Canada[66], it can be established that with China's accession to the WTO, Canada eliminated two specific limits: on category 44 (work gloves; integrated during Stage 1) and category 6 (tailored collar shirts; integrated in Stage 2). In addition, Canada also abolished the so-called consultation levels (that could trigger the imposition of restrictions) pertaining to three sub-categories (5.1 – trousers, men's and boys', wool; 11.1 – sweaters, men's and boys'; 45.1 – handbags, not coated). It should be noted, however, that while handbags had been integrated by Canada in Stage 2, the elimination of the consultation levels in the other two sub-categories did not result from the integration of the products covered, all the less since Canada continues to maintain specific limits on the imports of the respective broader categories.

101. Canada confirmed that it had eliminated on 1 January 2002 the quantitative restraints on imports from Chinese Taipei of those products that Canada had integrated during the first three stages of integration under the ATC. Relying on the respective notifications received from Canada[67], it can be established that the elimination of one specific limit (category 44 – work gloves and liners) was attributable to the integration of the products concerned in Stage 1, while the abolition of three further specific limits (category 6 – tailored collar shirts; category 45 – handbags and category 46 – tablecloths) resulted from the integration implemented in Stage 2.

102. Canada had not maintained any restriction on imports from FYROM.

103. Turning to the assessment of the impact of the Stage 3 integration programme implemented by Canada, it is appropriate to recall once again that the TMB had provided a detailed analysis regarding this matter in the second comprehensive report.[68] For the purpose of the present report, a summary of some of the observations made earlier by the TMB, together with an update reflecting developments subsequent to the adoption of the previous report, is provided in the following paragraphs.

104. In addressing the extent to which quantitative restrictions maintained by Canada had been affected by the implementation of its Stage 3 integration programme on 1 January 2002, it should be borne in mind that the system of restraints applied by Canada is relatively complex, whereby in a significant number of cases a single product category or sub-category does not necessarily cover all the products subject to a specific restraint. This is largely due to the fact that, in a number of cases, the specific limits and sub-limits comprise merged product categories and sub-categories. In such circumstances, the integration of a single product category or sub-category did not necessarily result in the elimination of an entire quantitative restriction; rather it led to narrowing the scope of products (categories or sub-categories) that continues to be subject to a specific restriction.[69]

105. In light of the above, the effect of integration can be assessed as follows:

- in a number of cases, specific limits and sub-limits, comprising single or merged categories and sub-categories were fully eliminated, as a result of the implementation of the Stage 3 integration programme;

- in some other cases, specific limits and sub-limits were only partially eliminated, resulting from the inclusion in the integration programme of parts of categories or sub-categories subject to restraints; it being understood that a category or, at least a sub-category became integrated in its entirety;

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[66] See G/TMB/N/62; G/TMB/N/62/Add.3 and Add. 3/Corr.1; also G/TMB/N/2 and Corrigenda; G/TMB/N/214 and Corrigenda.

[67] See G/TMB/N/62; G/TMB/N/62/Add.4 and Add/4/Corr.1; also G/TMB/N/2 and Corrigenda; G/TMB/N/214 and Corrigenda.

[68] See G/L/459, paragraphs 93 to 103.

[69] See also paragraph 55 above.

- in several other cases, no category or sub-category was integrated in its entirety, but specified products belonging to the respective category or sub-category were included in the integration programme and, as a result, the integrated items ceased to be subject to the restriction that continues to apply to the respective non-integrated products.

106. Table 1 lists all those specific limits and sub-limits which were fully eliminated as a result of the implementation by Canada of its Stage 3 integration programme.[70]

Table 1

Specific Limits and Sub-Limits, Comprising Single or Merged Categories and Sub-Categories Fully Eliminated by Canada as a Result of the Implementation of its Stage 3 Integration Programme

Category/Sub-Category/Merged Categories Subject to Restraint	WTO Members Affected
7.0**	Chinese Taipei; India ; Myanmar; Pakistan
7.0/8.1**	Romania; Sri Lanka*; Swaziland; Thailand*; United Arab Emirates
7.1, 7.2/8.1**	China*; Hong Kong, China*; Korea*
8.1	Chinese Taipei*
12.0	China; Chinese Taipei; Hong Kong, China; Macao, China; Qatar; Philippines; Sri Lanka; Swaziland; Thailand
14.0	Bangladesh; Chinese Taipei; Hong Kong, China; Indonesia; Korea; Macao, China; Malaysia; Philippines; Qatar; Singapore; Sri Lanka; Swaziland; Thailand; United Arab Emirates
14.2	Chinese Taipei
14.2 – 14.9	China
14.3	Chinese Taipei
14.4	Chinese Taipei
14.5	Chinese Taipei
14.6	Chinese Taipei; Romania
14.7	Chinese Taipei
14.8	Chinese Taipei
14.9	Chinese Taipei

*Denotes sub-limits to be fully eliminated, while a part of the respective broader specific limits continues to be maintained.
**Part of the respective category/sub-categories were already removed from restraints in relation to WTO Members on 1 January 1998, pursuant to Article 2.15.

Source: Table 3 of G/L/459, as updated on the basis of G/TMB/N/62/Add.3, Add.3/Corr.1, Add.4, Add.4/Corr.1; also G/TMB/N/370 and its Corrigenda.

107. In addition, Table 2 includes all those specific limits or sub-limits which were partially eliminated by Canada on 1 January 2002, resulting from the integration of entire part(s) of broader restrictions comprising single or merged categories and sub-categories.

[70] The TMB requested the Canadian authorities to check the information contained in Tables 1 to 3. In response, Canada proposed certain corrections and adjustments in the three tables, which have been taken into consideration by the TMB in finalizing the tables concerned.

Table 2

Specific Limits and Sub-Limits, Comprising Single or Merged Categories and Sub-Categories Partially Eliminated by Canada as a Result of the Inclusion of Parts of the Respective Categories or Sub-Categories Subject to Restraints in the Stage 3 Integration Programme

Category/Sub-Category/Merged Categories Subject to Restraint	Part of the Respective Category/Sub-Category Integrated	WTO Members Affected
3.0/4.0	4.1**	Philippines; Sri Lanka; Swaziland; United Arab Emirates
3.2/4.0	4.1**	Malaysia; Philippines*; Romania; Singapore
3.2/4.1, 4.2	4.1**	Bangladesh***; China; Hong Kong, China; Pakistan
4.0	4.1**	Bulgaria; India; Indonesia; Korea; Swaziland; Thailand
4.1, 4.2	4.1	Chinese Taipei; Macao, China
7.0/8.0	7.0/8.1**	Hong Kong, China; Indonesia; Malaysia; Sri Lanka; Thailand
7.0/8.1, 8.2, 8.3	7.0/8.1**	China; Korea; Oman; Qatar; Philippines; Singapore; Swaziland; United Arab Emirates
7.0/8.1, 8.4	7.0/8.1**	Bangladesh***
8.0	8.1	Chinese Taipei
8.1, 8.2, 8.3	8.1**	Pakistan; South Africa
12.0/13.0	12.0	Korea
8.1, 8.3, 8.4	8.1	India
7.0/8.1	7.0/8.1	Romania; Swaziland; United Arab Emirates

*Denotes sub-limit.
**Part of the respective category/sub-category was already removed from restraints in relation to WTO Members on 1 January 1998, pursuant to Article 2.15.
***All the remaining restrictions on imports, for goods qualifying for the LDC initiative, from Bangladesh were subsequently removed by Canada, on 1 January 2003, as a result of the implementation of its Market Access Initiative for Least-Developed Countries. See in particular paragraphs 182 to 183 below.

Source: Table 4 of G/L/459, as updated on the basis of G/TMB/N/62/Add.3, Add.3/Corr.1, Add.4, Add.4/Corr.1; also G/TMB/N/370 and its Corrigenda.

108. Table 3 contains the listing of the categories and sub-categories that were subject to partial elimination of restrictions as a result of integration in Stage 3 of specified products belonging to the respective categories or sub-categories.

Table 3

Product Categories and Sub-Categories Subject to Partial Elimination of Restrictions as a Result of the Implementation by Canada of its Stage 3 Integration Programme

Category/ Sub-Category	Product Integrated	WTO Members Affected
2 and/or 5.4	Men's and boys', women's and girls', children's bib and brace overalls, knitted, crocheted, woven	Bangladesh*; Bulgaria; China; Chinese Taipei; Hong Kong, China; India; Indonesia; Korea; Lesotho*; Macao, China; Malaysia; Mauritius; Myanmar; Pakistan; Philippines; Qatar; Romania; Singapore; Slovak Republic; South Africa; Sri Lanka; Swaziland; Thailand; Turkey; United Arab Emirates
22.1	Nylon filament yarn	Chinese Taipei; Korea
22.2	Nylon staple yarn	Chinese Taipei; Korea
23.1	Polyester filament yarn	Chinese Taipei; Korea

Category/ Sub-Category	Product Integrated	WTO Members Affected
31.1	Combed wool fabrics	Bulgaria; China; Chinese Taipei; Czech Republic; India; Korea; Poland; Romania; Slovak Republic; Uruguay
32.1	Unbleached cotton fabrics	Chinese Taipei; Hong Kong, China; Korea
32.2	Finished cotton fabrics, woven	China; Chinese Taipei
32.3	Coated cotton fabrics	Chinese Taipei; Hong Kong, China; India
34.2	Coated fabrics from high tenacity yarn	Chinese Taipei; Poland; Thailand
35	Polyester filament fabrics, coated	Chinese Taipei; Korea; Poland
36.2	Coated poly/cotton fabrics	China; Chinese Taipei; Hong Kong, China; Korea
37.1	Coated poly/rayon fabrics	Chinese Taipei
37.2	Coated fabrics from other artificial filament	Korea
43.2	Hosiery, for babies	China; Chinese Taipei; Korea; Singapore; Thailand

*The remaining restrictions on imports from Bangladesh and Lesotho were subsequently removed by Canada, on 1 January 2003, as a result of the implementation of its Market Access Initiative for Least-Developed Countries. See in particular paragraphs 182 to 183 below.

Source: Table 2 of G/L/459, as revised and also updated on the basis of G/TMB/N/62/Add.3, Add.3/Corr.1, Add.4 and Add.4/Corr.1.

109. To complete the picture, it should be noted, that, in addition to the limits and categories listed in Tables 2 and 3, a few group or aggregate limits were also affected by the implementation of Stage 3 integration, in the sense that certain parts of the constituting categories or sub-categories became integrated. These are the following:

- group limits affecting, *inter alia*, categories 4.0, 7.0, 8.1, 8.2, 8.3 and 8.4 with respect to India (categories 4.1, 7.0 and 8.1 were integrated);
- group level affecting sub-categories 4.1 and 4.2 in relation to Macao, China (sub-category 4.1 was integrated);
- group levels affecting, among others, categories 7.0 and 8.0 with respect to Macao, China (categories 7.0 and 8.1 became integrated);
- an overall limit (so-called OOA) covering categories 1.0 to 14.0 maintained on imports from Qatar;
- an overall group limit (categories 1.0, 14.0 and 16.0) affecting Macao, China (categories 12.0 and 14.0 were integrated).[71]

110. Based on the overview provided in Table 1, it would appear that with the implementation of its Stage 3 integration programme Canada eliminated altogether 46 specific restrictions (limits or sub-limits) in their entirety. In addition, as reflected in Table 2, 42 specific limits or sub-limits were partially eliminated and, also, the product coverage of certain restrictions was reduced, affecting more than 60 restrictions (Table 3 refers) as a result of the integration of specified products belonging to the restrictions concerned.

[71] See G/L/459, paragraph 98.

111. As regards the impact of partial integration (and the resulting partial elimination of the respective restrictions), in one of its communications addressed to the TMB in the first half of 2001, Canada indicated, *inter alia*, that in those categories from which certain apparel, yarns, fabric and made-up products would be integrated in the third stage, "these products would be removed from the coverage of quantitative restrictions under these categories. In order to maximize the benefits of this integration to exporters, the restraint levels for these categories [would] not be reduced to reflect the removal of these products from the restraint coverage."[72]

112. In a subsequent communication, further clarification was provided by Canada regarding the treatment of the restraint level for those cases where one or more categories to be integrated in Stage 3 fall under a combined restraint level. "For example, in some of Canada's bilateral arrangements, category 7.0 (and hence sub-categories 7.1, 7.2 and 7.3) is grouped or combined with category 8.0 (and hence categories 8.1, 8.2, 8.3 and 8.4) under one restraint level covering all these products. As a result of the third stage of integration, the products under category 7.0 and category 8.1 will be removed from this restraint on 1 January 2002, but the remaining products under categories 8.2, 8.3 and 8.4 will remain subject to restraint. In all such instances where a category [to be integrated] [...] falls under a broader group or combined restraint under a bilateral arrangement, the restraint level for these group or combined restraints will not be reduced to reflect the removal from these restraint level of products in the categories integrated fully on 1 January 2002 under the third stage of integration, […] resulting in a *de facto* increase in the restraint level, and hence access to the Canadian market, for the products remaining under restraint during the last phase of the ATC's transition period. In other words, the same treatment will apply in those instances where specific products will be removed from restraint under a larger compilation or aggregate restraint level maintained by Canada".[73] Furthermore, with the accession of China and Chinese Taipei, respectively, Canada confirmed that, as in the case of other WTO Members, Canada had not adjusted downwards the levels of those restraints on imports from the new Members when products had been removed from the coverage of these restraints in the third stage of integration.

113. The TMB had already observed in its second comprehensive report that the decision of Canada of not implementing any downward adjustment in the respective restraint levels could provide, to a varying extent, increased access opportunities in the products that would continue to be subject to restraint in the respective limits or sub-limits.[74] The TMB went on to state that it "has neither sufficient information at its disposal, nor the necessary analytical tools to conduct a detailed examination, limit-per-limit, of the potential impact on the WTO Members affected in terms of increased opportunities for access to the Canadian market in those cases when, as a result of partial integration, parts of specific limits will be lifted, while restraints will continue to be applied on other products falling under the same specific limits (since these latter products will not be integrated). It is important to recall in this regard the decision notified by Canada to keep the level of the remaining respective restraints unchanged and, therefore, not to reduce them with reference to the fact that their product coverage will be reduced. It would appear that the potential impact or, to put it differently, the potential significance to trade of partial integration, coupled with maintaining the same restraint level for the products that will continue to fall under restriction should be assessed case by case. However, a few observations of a more general nature can be made. First, the relative share or significance of the imports of products to be integrated from a broader specific limit seems to be of crucial importance: when this share is modest, the potential significance to trade of both integration and keeping the restraint level unchanged, would be, in all likelihood, also relatively modest. In the opposite case (i.e. when imports of products to be integrated represent a relatively high share of the broader restraint level), the potential impact can also be important for trade in products which will continue to remain under restraint. With respect to this latter situation, the assessment may become more nuanced if information on the rate of utilization of the respective specific limits can also be

[72] See G/L/459, paragraph 99.
[73] Ibid.
[74] Ibid., paragraph 100.

brought into the picture. The potential significance to trade would appear to be the greatest in those cases when the rate of utilization of parts of limits to be integrated and also of the other part which would not be integrated is relatively high, or when the restraint level corresponding to the part of limit to be integrated is under utilized, while the remaining part is highly utilized. It would appear that the decision of Canada not to adjust downward the respective restraint levels could bring about a real increase in access opportunities in some cases, when the ability and capacity of producing and exporting more is assured and keeping the restraint levels unchanged amounts to a one-time significant increase in access opportunities for the respective products remaining under restriction."[75]

114. In the view of the TMB, its earlier observations and assessment, as detailed in paragraph 113 above, proved to be essentially appropriate. In the absence of detailed statistical information at the TMB's disposal, only a general impression can be gathered on the likely impact on actual trade of Canada's decision not to adjust downwards the respective levels of the remaining restrictions. While it would appear that the answer should be nuanced to the question as to whether the Members affected actually benefited from these increased market access opportunities, and if so, to what extent, the fact remains that the decision of Canada to keep the level of the remaining respective restrictions unchanged opened up the possibility for an increase in market access for those products that continue to be subject to restrictions under the corresponding specific limits.

(ii) European Communities

115. In any attempt for providing an update to the global picture of the impact of the integration programmes implemented by the European Communities, it should be noted that the EC provided separate notifications, respectively under Articles 2.1 and 3.1, of the quantitative restrictions maintained by it on imports from China. In this approach, the restrictions affecting products that had been covered by the former MFA were notified under Article 2.1[76], while the quantitative restrictions "maintained under the non-MFA [bilateral] Agreement"[77] with China were listed in the notification submitted with reference to Article 3.1.[78] As regards the restrictions falling under Article 2.1, the European Communities reported that it had eliminated on the day of China's accession (i.e. on 11 December 2001) two of them (namely those affecting categories 19 and 76), since the products belonging to these categories had already been integrated into GATT 1994 in Stage 2 by the EC. Furthermore, as far as restrictions notified under Article 3.1 are concerned, the European Communities indicated that on the day of China's accession it had "integrated in total 11 categories (ex 13, ex 24, ex 39, 123, 124, 125A, 126, 127A, 127B, 140 and 151B)".[79] While some of these categories were in fact integrated by the European Communities either in Stage 1 (e.g. category 126) or in Stage 2 (e.g. category 124), it would appear that several others or, at least, parts of them, (such as categories 123, 125A, 127A, 127B, 140 and 151B) formed part of the Stage 3 integration programme notified by the EC and, therefore, their formal integration into GATT 1994 presumably took place only on 1 January 2002.

116. Unlike in the case of China, all the restrictions applied on imports from Chinese Taipei were notified by the European Communities with reference to Article 2.1 It would appear that the elimination on 1 January 2002 of five of the restrictions notified (namely those affecting categories 67, 74, 77, 91 and 110) is attributable to the fact that these categories had already been included in the Stage 2 integration programme implemented by the EC on 1 January 1998.

117. The European Communities had not maintained any restrictions on imports from FYROM.

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[75] See G/L/459, paragraph 103.
[76] See paragraph 153 below.
[77] See G/TMB/N/64/Add.2/Suppl.1
[78] See paragraph 376 below.
[79] See G/TMB/N/64/Add.2/Suppl.1.

118. Turning to the assessment of the extent to which quantitative restrictions maintained by the European Communities had been affected by the implementation of the EC's Stage 3 integration programme, it should be recalled that the specific restraints maintained by the European Communities fully correspond, in most cases, to the products falling under the respective product categories, as those categories are defined by the EC. Table 4 summarizes those quantitative restrictions that were eliminated on 1 January 2002 as a result of the implementation of the Stage 3 integration programme by the European Communities.[80]

Table 4

Quantitative Restrictions Affected by the Third Stage of Integration of the European Communities

Category	Product Description	WTO Members affected
10	Gloves, mittens and mitts, knitted or crocheted	China; Chinese Taipei; Hong Kong, China; Korea; Philippines; Thailand
18	Men's or boys' singlets and other vests, underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, other than knitted or crocheted. Women's or girls' singlets and other vests, slips, petticoats, briefs, panties, nightdresses, pyjamas, negligees, dressing gowns and similar articles, other than knitted or crocheted	China; Chinese Taipei; Hong Kong, China; Korea; Macao, China; Pakistan
21	Parkas; anoraks, windcheaters, waister jackets and the like, other than knitted or crocheted, of wool, of cotton or of man-made fibres; upper parts of tracksuits with lining, other than category 16 or 29, of cotton or of man-made fibres	China; Chinese Taipei; Hong Kong, China; Indonesia; Korea; Macao, China; Philippines; Sri Lanka; Thailand
24	Men's or boys' nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted. Women's or girls' nightdresses, pyjamas, negligees, dressing gowns and similar articles, other than knitted or crocheted	China; Chinese Taipei; Hong Kong, China; India; Korea; Macao, China; Thailand
27	Women's or girls' skirts, including divided skirts	Chinese Taipei; Hong Kong, China; India; Korea; Macao, China
32	Woven pile fabrics and chenille fabrics (other than terry towelling or terry fabrics of cotton and narrow woven fabrics) and tufted textile surfaces, of wool, of cotton or of man-made textile fibres	China; Hong Kong, China; Korea
33	Woven fabrics of synthetic filament yarn obtained from strip or the like of polyethylene or polypropylene, less than 3m wide. Sacks and bags, of a kind used for the packing of goods, not knitted or crocheted, obtained from strip or the like	China; Chinese Taipei; Indonesia; Korea
36	Woven fabrics of continuous artificial fibres, other than those for tyres of category 114	Korea
37	Woven fabrics of artificial staple fibres	China; Chinese Taipei; Korea
37A	Of which: other than bleached or unbleached	China
68	Babies' garments and clothing accessories, excluding babies' gloves, mittens and mitts of categories 10 and 87, and babies' stockings, socks and sockettes, other than knitted or crocheted, of category 88	China; Chinese Taipei; Hong Kong, China; Korea
73	Track suits of knitted or crocheted fabric, of wool, of cotton or of man-made textile fibres	China; Chinese Taipei; Hong Kong, China; Korea; Macao, China; Philippines; Thailand

[80] The TMB requested the European Communities to check the information contained in Table 4. No further information was received from the EC.

Category	Product Description	WTO Members affected
ex 18	Men's or boys' singlets and other vests, underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, other than knitted or crocheted. Women's or girls' singlets and other vests, slips, petticoats, briefs, panties, nightdresses, pyjamas, negligees, dressing gowns and similar articles, other than knitted or crocheted; other than those of wool or fine animal hairs, cotton or synthetic or artificial textile materials	China*
120	Curtains (including drapes), interior blinds, curtain and bed valances and other furnishing articles, not knitted or crocheted, of flax or ramie	China*
123	Woven pile fabrics and chenille fabrics; shawls, scarves (of flax or ramie)	China*
125A	Synthetic filament yarn	China*
127A	Yarn of artificial filaments	China*
127B	Monofilaments, strip (artificial straw and the like) and imitation catgut of artificial textile materials	China*
140	Knitted or crocheted fabric of textile material, other than wool or fine animal hair, cotton or man-made fibres	China*
145	Twine, cordage, ropes and cables plaited or not abaca (Manila hemp) or of true hemp	China*
146A	Binder or baler twine for agricultural machines, of sisal or other fibres of the agave family	China*
146B	Twine, cordage, ropes and cables of sisal or other agave family, other than the products of category 146A	China*
151B	Carpets and other floor coverings, of jute or of other textile bast fibre	China*
160	Handkerchiefs of silk or silk waste	China*
161	Garments, not knitted or crocheted, other than those of categories 1 to 123 and category 159	China*

*The restrictions previously maintained on imports of these categories from China were notified by the European Communities under Article 3.1.
Source: Table 6 of G/L/459, as updated on the basis of G/TMB/N/60/Add.5 and Supplements, G/TMB/N/60/Add.6 and Supplements, G/TMB/N/64/Add.2 and Supplements, also G/TMB/N/363 and Addenda.

119. Based on the information detailed in Table 4, it would appear that with the implementation of its Stage 3 integration programme, the European Communities eliminated 56 specific restrictions (of which one – category 37A – represented a sub-limit) that would fall under Article 2.1. In addition, by the same move, the EC also eliminated 13 further restrictions that had been notified with reference to Article 3.1.

(iii) United States

120. In assessing the impact of the implementation of the integration programmes of the United States, it is important to recall that the complex nature of the system of restrictions maintained by the United States does not facilitate the task of providing a relatively simple and straightforward analysis of the effect of integration on the restrictions applied. Though in a number of cases the products covered by a category used by the United States correspond fully to a specific restriction that was previously maintained or continues to be applied, in several other cases they do not. The main reason for this is that in several instances, a specific restraint is composed of merged categories, of which only one or a few were integrated, while the restrictions continue to be applied with respect to the other(s). In addition, the United States also integrated certain parts of some single categories, resulting in a partial elimination of the restrictions concerned. Furthermore, in a significant number of cases, although specific limits were eliminated, broader (aggregate or group) limits continue to be maintained (with a reduced product coverage resulting from the exclusion from the broader limits of

the products that became integrated).[81] The same applies to those product categories which, prior to their integration, had not been subject to specific restraints, but formed part of a broader limit.

121. Based on the indications given by the United States in its respective notifications[82], it would appear that the US implemented its Stages 1, 2 and 3 integration programmes *vis-à-vis* China in one step, on 1 January 2002. No products or categories subject to restraints on imports from China were affected by the Stage 1 integration. The partial elimination of one specific restriction (certain accessories of babies' garments and clothes; category 239) can be attributed to the implementation of the Stage 2 integration programme. In addition, as a result of the same integration programme, some 20 categories subject to broader (group) limits also became integrated into GATT 1994. Thus, these categories were excluded, as from 1 January 2002, from the coverage of the respective group limits, but the size of these group limits was also reduced by an amount which was designed to correspond to the volume of imports effected from China in the categories integrated.

122. The United States implemented its Stages 1, 2 and 3 integration programmes *vis-à-vis* Chinese Taipei also in one step, on 1 January 2002. Similarly to the case of China, the Stage 1 integration did not affect any restriction maintained on imports from Chinese Taipei. As a result of the implementation of the Stage 2 integration, one specific restriction was partially eliminated (category 239) and 18 product categories subject to broader (group) limits also became integrated, with exactly the same methodology and with the similar effect as in the case of China, as described in paragraph 121 above.

123. Prior to the accession of FYROM to the WTO, the United States had maintained five specific restrictions on imports from FYROM. None of the product categories concerned were integrated by the United States in Stages 1, 2 and 3; therefore, the implementation of the integration programmes of the United States did not affect the specific restrictions maintained on imports from FYROM and notified under Article 2.1

124. As regards the updated global picture of the impact of the implementation by the United States of its Stage 3 integration programme and, more specifically, the extent to which quantitative restrictions maintained by the United States had been affected by this implementation, four types of situations can be distinguished[83]:

- in a number of cases, specific limits and sub-limits, comprising single or merged product categories were fully eliminated; these are reflected in Table 5;

- in several other cases, specific limits were partially lifted, as a result of the integration of certain categories from broader merged categories subject to restraints; these categories are listed in Table 6;

- in a few other cases, specific limits were partially eliminated because parts of the respective categories, subject to restraints, became integrated; these cases are summarized in Table 7;[84]

- in some cases, categories not subject to specific restraint, but forming part of a group limit became integrated and, as a result, these categories were excluded from the coverage of the respective broader limit.

[81] See also G/L/459, paragraph 109.
[82] See in particular G/TMB/N/62/Add.12/Suppl.1.
[83] See also G/L/459, paragraph 109.
[84] The TMB requested the United States to check the information contained in Tables 5 to 7. The adjustments proposed by the United States in response have been taken into consideration in finalizing those tables.

Table 5

Specific Limits and Sub-Limits Comprising Single or Merged Categories Fully Eliminated by the United States as a Result of the Implementation of its Stage 3 Integration Programme

Category/Merged Categories Subject to Restraint	Brief Product Description	WTO Members Affected
222	Knit fabric	Singapore
350	Robes and dressing gowns, cotton	Brazil; China*; Chinese Taipei**; Haiti; Hong Kong, China*; Korea*; Philippines; Romania; Turkey
350/650	Robes and dressing gowns, cotton and MMF	Chinese Taipei*; Indonesia; Malaysia; Sri Lanka
350/850	Robes and dressing gowns; cotton and silk/veg. blends	Macao, China
359H	Headwear	Korea*
369-D	Dishtowels	China*; Brazil*; India; Sri Lanka; Thailand
369-F/P	Dishtowels, cotton	Pakistan
369-H	Handbags, cotton	China*
369-L	Luggage, cotton	China*; Chinese Taipei**
369-L/670-L/870	Luggage; cotton; MMF, silk and veg. blends	Chinese Taipei*; Korea*
369-R	Bar mops	Pakistan
431	Gloves	Philippines
607	Staple fibre yarn	Brazil*; China*; Korea*; Thailand
622	Glass fibre fabric	Chinese Taipei
649	Bras and body support garments, MMF	China*; Hong Kong, China*; Philippines
650	Robes and dressing gowns, MMF	China*; Chinese Taipei**; Hong Kong, China*; Korea; Philippines
669	Polyethylene bags	Brazil*; Korea*; Thailand
669-P	Bags, woven of MMF	China*; Chinese Taipei*
669-T	Tents	Chinese Taipei*
670-H	Handbags, MMF	Chinese Taipei*
670-L	Luggage, MMF	China*; Chinese Taipei**
831	Gloves and mittens, silk and veg. blend	China*
833	Men's and boys' suit-type coats, silk and veg. blends	China*
834	Other men's and boys' coats and jackets, silk and veg. blends	Hong Kong, China*
835	Women's and girls' coats, silk and veg. blends	China*; Chinese Taipei*; Hong Kong, China*; Korea; Malaysia**
836	Dresses; silk and veg. blends	China*; Hong Kong, China*
840	N-knit shirts and blouses, silk and veg. blends	China*, Hong Kong, China*; Sri Lanka
842	Skirts, silk and veg. blends	China*, Hong Kong, China*
847	Trousers/breeches/shorts, silk and veg. blends	Bangladesh; China*; Hong Kong, China*; Indonesia; Philippines; United Arab Emirates
870	Luggage, silk and veg. blends	China; Chinese Taipei*

*Broader (aggregate or group) restraints continue to be applied for products not integrated from the respective aggregate or group limits.
**Denotes a sub-limit.
Source: Table 9 of G/L/459, as updated on the basis of G/TMB/N/63/Add.12 and Supplements; and Add. 13 and Supplements.

Table 6

Specific Limits Partially Eliminated by the United States Resulting from the Integration in Stage 3 of Certain Categories from Broader Merged Categories Subject to Restraints

Category(ies) Subject to Specific Restraint	Category(ies) Integrated	WTO Members Affected
333/833	833	Romania
333/334/335/ 833/834/835	833, 834, 835	Macao, China
333/334/335/835	835	Malaysia
335/635/835	835	Thailand; United Arab Emirates
335/835	835	Mauritius; Romania, Sri Lanka
336/636/836	836	Sri Lanka
336/836	836	Macao, China
341/840	840	Romania
342/642/842	842	Malaysia; Sri Lanka
347/348/847	847	Macao, China; Sri Lanka; Thailand*
351/851	851	Macao, China
359H/659H	359H	Chinese Taipei*; Thailand*
443/444/643/644/ 843/844	843, 844	Hong Kong, China*
638/639/838	838	Macao, China; Sri Lanka
641/840	840	Macao, China
642/842	842	Macao, China
644/844	844	China*
647/648/847	847	Mauritius

*Also subject to aggregate or group limits.
Source: Table 10 of G/L/459, as updated on the basis of G/TMB/N/63/Add.12 and Supplements; Add.13 and Supplements.

Table 7

Specific Limits Partially Eliminated by the United States Resulting from the Integration in Stage 3 of Parts of Categories Subject to Restraints

Category Subject to Restraint	Integrated Part of the Respective Category (brief product description)	WTO Members Affected
331	Cotton gloves (only knitted)	Bangladesh; China; Chinese Taipei; Haiti; Hong Kong, China*; Indonesia; Jamaica; Malaysia; Pakistan; Philippines; Singapore; Sri Lanka; Thailand*
359	Cotton pantyhose and tights, shawls and scarves	Korea*; Romania*; Thailand*
369	Blankets, furnishing articles, bedding	Romania; United Arab Emirates
631	Man-made fibre gloves (only knitted)	China*; Hong Kong, China*; Indonesia; Jamaica; Korea*; Malaysia; Pakistan; Philippines; Singapore; Sri Lanka; Thailand*
666	Furnishings, except bed sheets, pillow cases and certain linen	China*; Romania

*Also subject to aggregate or group limits.
Source: Table 11 of G/L/459, as updated on the basis of G/TMB/N/63/Add.12 and Supplement, and Add.13 and Supplements.

125. As reflected also in the detailed listing provided in Tables 5 to 7, in a significant number of cases, irrespective of the full or partial elimination of the specific limits or sub-limits concerned, broader limits (group limits) continue to be applied by the United States to those categories that still remain subject to specific limits within the broader groups and also to those which, while not being subject to specific limits, have not yet been integrated into GATT 1994. In terms of possible impact on trading opportunities, it is to be noted that the United States adjusted downwards the levels of the respective group limits by deducting from them the volume of trade effected in the categories fully or partially integrated. This adjustment led, in some cases, to a considerable decrease in market access opportunities for products belonging to the categories not yet integrated.[85]

126. On the basis of the overview included in Table 5, it would appear that with the implementation of its Stage 3 integration programme, the United States eliminated altogether 74 specific limits or sub-limits. Of these 74 cases, however, group limits continue to be maintained in 39 cases with respect to the related categories and products not yet integrated. Furthermore, the United States eliminated parts of 26 specific limits, as a result of the integration in Stage 3 of certain product categories from broader merged categories (see Table 6). Also, parts of specific limits in five categories, affecting altogether 17 WTO Members, were abolished as a result of the partial integration in Stage 3 of the categories concerned (Table 7 refers).

(iv) Turkey

127. Similar to what had been done by the European Communities, Turkey submitted separate notifications, respectively with reference to Articles 2.1 and 3.1, of the quantitative restrictions applied by it on imports from China. Turkey explained that its notification submitted under Article 2.1 contained "the required information regarding quantitative restrictions [...] for textiles and clothing products covered by the MFA Agreement", while the restrictions notified pursuant to Article 3.1 were "not covered by the MFA Agreement." It is appropriate to observe in this regard that the MFA expired at the end of 1994, and Turkey had never applied restrictions under the defunct MFA. The reason for Turkey to provide the notifications in the pattern described above stemmed, in all likelihood, from its earlier statement according to which "Turkey and the European Community, which form a customs union, will continue to apply the same duties and other regulations of commerce [...] in respect of products covered by the Agreement on Textiles and Clothing".[86] In the notification related to the restrictions on imports from China, Turkey stated that it "was required to apply the quantitative restrictions as part of the common regulation of commerce of the Turkey-EC Customs Union on imports of certain textile products which the EC maintained pursuant to the ATC."[87]

128. As far as the quantitative restrictions notified with reference to Article 2.1 are concerned, Turkey reported that it had eliminated two of them (categories 19 and 76) on the day of China's accession, with the implementation of Turkey's Stage 1 and 2 integration programmes. Furthermore, according to Turkey, of the restrictions notified under Article 3.1, in total 11 categories (categories ex 13, ex 24, ex 39, 123, 124, 125A, 126, 127B, 140 and 151B) were "integrated" on 11 December 2001. It would appear, however, that most of these categories formed part of the Stage 3 integration programme notified by Turkey and, therefore, their formal integration into GATT 1994 presumably took place only on 1 January 2002.

129. All the quantitative restrictions maintained by Turkey on imports from Chinese Taipei were notified under Article 2.1. It would appear that the elimination on 1 January 2002 of five of the restrictions notified (namely those affecting categories 67, 74, 77, 91 and 110) is attributable to the

[85] See also paragraphs 458 to 463 below.
[86] See paragraph 66 above.
[87] See G/TMB/N/422/Add.1 and G/TMB/N/423/Add.1.

fact that these categories had already formed part of the Stage 2 integration programme implemented by Turkey on 1 January 1998.

130. Turkey had not maintained any restrictions on imports from FYROM.

131. As to the impact of the implementation of Turkey's Stage 3 integration programme, Table 8 lists all those quantitative restrictions that were eliminated on 1 January 2002 as a result of Stage 3 integration.[88]

Table 8

Quantitative Restrictions Affected by the Third Stage of Integration of Turkey

Category	Product Description	WTO Members affected
10	Gloves, mittens and mitts, knitted or crocheted	China; Chinese Taipei; Hong Kong, China; Korea; Philippines; Thailand
18	Men's or boys' singlets and other vests, underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, other than knitted or crocheted. Women's or girls' singlets and other vests, slips, petticoats, briefs, panties, nightdresses, pyjamas, negligees, dressing gowns and similar articles, other than knitted or crocheted	China; Chinese Taipei; Hong Kong, China; Korea; Macao, China; Pakistan
21	Parkas; anoraks, windcheaters, waister jackets and the like, other than knitted or crocheted, of wool, of cotton or of man-made fibres; upper parts of tracksuits with lining, other than category 16 or 29, of cotton or of man-made fibres	China; Chinese Taipei; Hong Kong, China; Indonesia; Korea; Macao, China; Philippines; Sri Lanka; Thailand
24	Men's or boys' nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted. Women's or girls' nightdresses, pyjamas, negligees, dressing gowns and similar articles, other than knitted or crocheted	China; Chinese Taipei; Hong Kong, China; India; Korea; Macao, China
27	Women's or girls' skirts, including divided skirts	Chinese Taipei; Hong Kong, China; India; Korea; Macao, China
32	Woven pile fabrics and chenille fabrics (other than terry towelling or terry fabrics of cotton and narrow woven fabrics) and tufted textile surfaces, of wool, of cotton or of man-made textile fibres	China; Hong Kong, China; Korea
33	Woven fabrics of synthetic filament yarn obtained from strip or the like of polyethylene or polypropylene, less than 3m wide. Sacks and bags, of a kind used for the packing of goods, not knitted or crocheted, obtained from strip or the like	China; Chinese Taipei; Indonesia; Korea
36	Woven fabrics of continuous artificial fibres, other than those for tyres of category 114	Korea
37	Woven fabrics of artificial staple fibres	China; Chinese Taipei; Korea
37A	Of which: other than bleached or unbleached	China
68	Babies' garments and clothing accessories, excluding babies' gloves, mittens and mitts of categories 10 and 87, and babies' stockings, socks and sockettes, other than knitted or crocheted, of category 88	China; Chinese Taipei; Hong Kong, China; Korea
73	Track suits of knitted or crocheted fabric, of wool, of cotton or of man-made textile fibres	China; Chinese Taipei; Hong Kong, China; Korea; Macao, China; Philippines; Thailand

[88] The TMB requested Turkey to check the information contained in Table 8. Turkey proposed no adjustment to the table.

Category	Product Description	WTO Members affected
ex 18	Men's or boys' singlets and other vests, underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, other than knitted or crocheted. Women's or girls' singlets and other vests, slips, petticoats, briefs, panties, nightdresses, pyjamas, negligees, dressing gowns and similar articles, other than knitted or crocheted; other than those of wool or fine animal hairs, cotton or synthetic or artificial textile materials	China*
120	Curtains (including drapes), interior blinds, curtain and bed valances and other furnishing articles, not knitted or crocheted, of flax or ramie	China*
123	Woven pile fabrics and chenille fabrics; shawls, scarves (of flax or ramie)	China*
125A	Synthetic filament yarn	China*
127A	Yarn of artificial filaments	China*
127B	Monofilaments, strip (artificial straw and the like) and imitation catgut of artificial textile materials	China*
140	Knitted or crocheted fabric of textile material, other than wool or fine animal hair, cotton or man-made fibres	China*
145	Twine, cordage, ropes and cables plaited or not abaca (Manila hemp) or of true hemp	China*
146A	Binder or baler twine for agricultural machines, of sisal or other fibres of the agave family	China*
146B	Twine, cordage, ropes and cables of sisal or other agave family, other than the products of category 146A	China*
151B	Carpets and other floor coverings, of jute or of other textile bast fibre	China*
160	Handkerchiefs of silk or silk waste	China*
161	Garments, not knitted or crocheted, other than those of categories 1 to 123 and category 159	China*; Sri Lanka

*The restrictions previously maintained on imports of these categories from China were notified by Turkey with reference to Article 3.1.

132. On the basis of the overview detailed in Table 8, it would appear that with the implementation of its Stage 3 integration programme, Turkey eliminated 56 specific restrictions (of which one category – 37A – represented a sub-limit) that would fall under Article 2.1. Furthermore, Turkey also eliminated 13 further restrictions that had been notified with reference to Article 3.1.

133. It would also appear that the detailed examination of the impact of the integration programmes implemented by Turkey provides a global picture which is almost identical with the results of the analysis made with respect to the effect of the integration programmes notified by the European Communities. This is in line with Turkey's statements reproduced in paragraph 127 above.

134. Finally, the TMB has to reiterate that the examination of the impact of Turkey's integration programmes is without prejudice to the legal justification under the provisions of the ATC and/or GATT 1994, or the lack thereof, of the restrictions that had been introduced by Turkey on 1 January 1996 on imports of certain textiles and clothing products from countries or separate customs territories that had already been Members of the WTO at that point in time.[89]

[89] See also paragraph 99 above.

(b) Integration programmes of Members which had retained the right to use the provisions of Article 6

135. Integration programmes of Members, other than those which took over restraints from the pre-ATC regime, or those, like Turkey, which aligned their trade regime on that of a Member that took over such restraints, are relevant in the context of their retention of the right to have recourse to the provisions of the transitional safeguard mechanism of the ATC. Even in this context, the manner in which the scope of the products to be included in the respective integration programmes was defined can be of some importance. The TMB had already made some observations in this regard in its second comprehensive report[90] and these observations remain valid also in light of the Stage 3 integration programmes that had been notified and could be reviewed by the Body subsequent to its adoption of the second comprehensive report. According to these observations, essentially two basic approaches were followed by the Members concerned and this was done consistently for the consecutive stages of integration. One approach, adopted by a number of Members, was to include only very few products, corresponding to a limited number of HS lines in the respective programmes, including those related to Stage 3. This approach was adopted by those Members whose total imports in the base year (i.e. in most cases 1990) appeared to be heavily concentrated on a few items. Therefore, including only one or two products for each of the four main product groups could fully meet the requirements defined in Article 2.8(b), since the volume of imports in products to be integrated amounted to not less than the 18 per cent threshold requirement. The other approach, followed by several Members, consisted of long and diversified lists of products to be integrated. The reason for adopting this latter approach was, in all likelihood, the more dispersed nature of imports in the base year, resulting in the need of including many products in the respective lists of integration in order to ensure that the imports of the items covered added up to not less than the threshold requirement. The difference between these two basic approaches, in terms of their potential impact for the period covered by the third stage of the integration process, has been that, in the first case, the universe of products that can be subject to measures under Article 6 still remains broad, while in the other case, it is much more narrowed down (though this has to be assessed against the particular tariff structure of the Members concerned). However, the very limited and sparing use of the transitional safeguard mechanism by these Members would indicate that this difference in the potential impact has been more theoretical than real.

2. Final stage of integration to be implemented on 1 January 2005

136. Following the provisions of Article 2.11, notifications by Members regarding the final stage of integration were due to be received at least 12 months before the date of actual implementation, i.e. at the latest by 1 January 2004.[91] It should be noted that such notifications were received only from 14 Members and only one Member respected the deadline specified in Article 2.11 for providing its respective notification.

137. In the view of the TMB, it is appropriate to offer a few comments related to this issue. First, there is undeniably an explicit requirement under the ATC for Members to provide a notification regarding their last stage of integration. Therefore, it was appropriate for the TMB to remind Members, in particular those maintaining restrictions under the provisions of the Agreement, of the respective notification requirement. Second, this requirement notwithstanding, the relevant provisions of the ATC make it unequivocally clear that the textiles and clothing sector shall stand integrated into GATT 1994 on 1 January 2005 and also that the Agreement and all restrictions thereunder shall stand terminated on that date. This is going to happen, irrespective of whether WTO Members have submitted, or not, or are going to provide, or not, notifications regarding their respective final stage of integration. Third, the statements by Canada, the European Communities, Turkey and the United States, respectively, indicating that they will eliminate on 1 January 2005 all remaining restrictions

[90] See G/L/459, paragraph 114.
[91] See paragraphs 82 to 84 above.

under the ATC and will have integrated into GATT 1994 all the products covered by the ATC, could be considered in the context of ATC implementation as a simple formality, confirming the obvious. However, what could be, and probably has been perceived as a simple formality in the WTO framework in Geneva, has apparently gained more significance as a result of the broader dissemination of the information provided in these notifications. Seen in this light, these notifications conveyed an unambiguous message to the public at large and, in particular, to the economic operators concerned. They constituted conclusive evidence that the Members concerned would abide by their obligations and would not seek to alter their commitment to eliminate on schedule the restrictions maintained under the ATC. Fourth, in view of the importance attached to the administrative arrangements under the ATC regime, the TMB believes that it has made a useful contribution by pointing out that with the elimination of all quantitative restrictions maintained under the ATC, all related administrative procedures, including those specified in the administrative arrangements notified pursuant to Article 2.17, shall also stand terminated. In fact, the process of integration in the sense of the ATC will only become complete if administrative requirements that were related to the administration of the restrictions are also abolished.

II. QUANTITATIVE RESTRICTIONS AND RELATED MEASURES

A. QUANTITATIVE RESTRICTIONS NOTIFIED PURSUANT TO ARTICLE 2.1. ISSUES RELATED TO THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 2, EXCEPT THOSE CONCERNING INTEGRATION

138. The ATC, as an agreement for a transition period of ten years, has been designed to facilitate the progressive transition from an initial situation of a wide and complex network of restrictions on imports from several Members to one in which solely the rules and disciplines of GATT 1994 apply. This involves the elimination of all the restrictions maintained under the former MFA (Article 2 of the ATC) and also bringing into conformity with the provisions of GATT 1994, or phasing out, the other restrictions not justified under the provisions of GATT 1994[92] (Article 3 of the ATC). The starting-point of this transition process was the notification, pursuant to Article 2.1, of all MFA or MFA-type restrictions in place on 31 December 1994 (or, if applicable, on the day prior to the date of accession of a new Member) which the maintaining Members decided to roll over to the ATC. In accordance with Article 2.4, the restrictions notified under Article 2.1 were deemed to constitute the totality of such restrictions applied by the respective Members. Article 2.4 goes on to state, *inter alia*, that "[n]o new restrictions in terms of products or Members shall be introduced except under the provisions of the Agreement or related GATT 1994 provisions".

139. The ATC provides clear rules regarding the scope of the restrictions to be notified as well as all related matters (such as the base levels of the restrictions taken over to the ATC regime) in relation to those exporters under restraint that became Members of the WTO at the time, or close to the time, when the WTO Agreement entered into force. There is no guidance, however, in the ATC regarding in particular, the base levels and related increases to be applied in cases of restrained exporters that acceded to the WTO only during Stage 2 or Stage 3 of the integration process. In these cases, all relevant aspects, such as the definition of the base levels to which the provisions of Article 2 should apply, had been agreed between the WTO Members and the new Member(s) concerned as part of the respective negotiations on the accession to the WTO and these agreed terms had been included in the reports adopted by the respective accession working parties.

140. The respective provision of the Report of the Working Party on the Accession of China reads as follows:

> "Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel

[92] For these latter restrictions, see paragraphs 372, 373 and 376 to 404 below.

> products originating in China that were in force on the date prior to the date of China's accession should be notified to the Textiles Monitoring Body ("TMB") as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ("ATC"). For such WTO Members, the phrase 'day prior to the date of entry into force of the WTO Agreement', contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession. To these base levels, the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession. The Working Party took note of these commitments."[93]

141. The corresponding provision of the Report of the Working Party on the Accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) states the following:

> "The representative of Chinese Taipei stated that the quantitative restrictions on imports of textiles and clothing products originating in Chinese Taipei under arrangements between Chinese Taipei and WTO Members that were in force on the date prior to the date of accession of Chinese Taipei to the WTO would be notified to the Textiles Monitoring Body (TMB) as being the base levels for the purpose of application of Article 2 of the Agreement on Textiles and Clothing. The representative of Chinese Taipei stated that for the purpose of Chinese Taipei's accession to the WTO, the phrase 'day prior to the date of entry into force of the WTO Agreement' contained in Article 2.1 of the Agreement on Textiles and Clothing would be deemed to refer to the day prior to the date of accession of Chinese Taipei to the WTO. To these base levels the increase in growth rates provided for in Articles 2.13 and 2.14 of the Agreement on Textiles and Clothing would be applied, in stages, from the date of accession of Chinese Taipei to the WTO."[94]

142. The Report of the Working Party on the Accession of the Former Yugoslav Republic of Macedonia (FYROM) states, *inter alia*, that "for the purposes of FYROM's accession to the WTO, the phrase 'day prior to the date of entry into force of the Agreement on Textiles and Clothing' shall be deemed to refer to the day prior to the date of accession of FYROM to the WTO. To this base level the increase in growth rates provided for in Articles 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of FYROM's accession." [95]

143. In light of the relevant provisions quoted in paragraphs 140 to 142 above, it can be established that the respective legal instruments of accession contain very similar, but not fully identical formulations.

144. The universe of the restrictions notified with reference to Article 2.1 is subject to the rules and procedures laid down in the other provisions of Article 2. A restriction is *ipso facto* removed if the product concerned (in terms of HS line or category) is integrated according to the provisions of Articles 2.6 or 2.8, or integrated earlier than provided for in an integration programme submitted under those Articles, according to the provisions of Article 2.10. It is also possible to eliminate a restriction at the beginning of any agreement year, pursuant to Article 2.15, without integrating the product concerned (and thereby reserving the right to invoke the provisions of Article 6 with respect to such a product). As long as a product is subject to a restriction notified under Article 2.1, the ATC provides for the gradual increase in market access opportunities in the product concerned (the growth-on-growth provision). This is an automatic process which runs in parallel with the progressive integration, since as from the very beginning of each stage of integration, an increased growth rate

[93] See WT/ACC/CHN/49, paragraph 241.
[94] See WT/ACC/TPKM/18, paragraph 167.
[95] See WT/ACC/807/27, paragraph 192.

had to be applied to the level of the respective restraints. The starting-point was, once again, the base level of the restrictions applied on the day before the entry into force of the WTO Agreement (Article 2.12) or, in the case of newly acceded Members, the level applied on the day prior to the date of their accession. This level had to be increased annually during Stage 1 by not less than the initial growth rate under the pre-ATC regime, increased by 16 per cent (Article 2.13). For Stage 2, the growth rate applicable during Stage 1 had to be increased annually by not less than 25 per cent (Article 2.14(a)), while for Stage 3, the growth rate applicable during Stage 2 had to be further increased annually by not less than 27 per cent (Article 2.14(b)). The respective flexibility provisions which are basically the same as provided for under the pre-ATC regime, are dealt with in Article 2.16. Small suppliers, new entrants and, to the extent possible, least-developed country Members benefit from higher or accelerated growth rates, pursuant to the provisions of Article 2.18. While in accordance with the provisions of Article 4.1, the restrictions are administered by the exporting Members[96], Article 2.17 authorizes the importing and exporting Members concerned to agree on administrative arrangements, as deemed necessary, in relation to the implementation of any provision under Article 2. The supervisory role of the TMB, *inter alia*, with the task of keeping under review the implementation of Article 2, is defined in Article 2.21.

1. Scope of the restrictions taken over from the pre-ATC regime: status and developments during the first and second stages of the integration process

145. Following the requirements of Article 2.1, 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 had to 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 the ATC, unless the products concerned have already become integrated into GATT 1994. In practice, these notification obligations applied to four WTO Members, Canada, the European Communities, Norway and the United States. Each of these Members complied with these notification requirements. An overview of these notifications has already been provided in the first comprehensive report adopted by the TMB.[97] The second comprehensive report also contained a summary of these notifications, together with subsequent developments that took place still during the implementation of Stage 1 of the integration process.[98] Also, the second comprehensive report provided a detailed overview of further developments that occurred during the implementation of Stage 2 of the integration process.[99]

2. Developments during Stage 3 regarding the restrictions notified with reference to Article 2.1

(a) New notifications received with reference, *inter alia*, to Article 2.1

146. Following the accession of new Members (China on 11 December 2001, Chinese Taipei on 1 January 2002 and FYROM on 4 April 2003) notifications were received, *inter alia*, with reference to Article 2.1, from Canada, the European Communities, Turkey and the United States. In reviewing these notifications pursuant to Article 2.21, the TMB had to rely on the applicable provisions of the respective legal instruments of accession as well as on the respective provisions of Article 2 of the ATC.

[96] See paragraph 445 below.
[97] See G/L/179, paragraphs 183 to 191.
[98] See G/L/459, paragraphs 247 to 256.
[99] See G/L/459, paragraphs 259 to 275.

(i) Notifications by Canada

(1) Restrictions on imports from China

147. At its meeting of January 2002, the TMB began its examination of a notification made with reference to Articles 2 and 3 by Canada, following the accession of China to the WTO. According to this notification, on the day prior to China's accession Canada had maintained altogether 26 specific limits and sub-limits plus three consultation levels (constituting a potential for triggering the introduction of restrictions) on imports from China. The TMB decided to seek clarifications from Canada concerning some aspects of this notification, including whether the quantitative restrictions notified fell under Article 2.1 or 3.1 of the ATC, the extent to which these restrictions had been affected by the ATC integration process and the status under the ATC of consultation levels contained in the notification.

148. Subsequently, the TMB took note of Canada's statement that all the quantitative restrictions on imports from China had been maintained under Article 4 or notified under Articles 7 or 8 of the MFA, and, therefore, were all being notified pursuant to Article 2 of the ATC only. Canada confirmed, furthermore, that the consultation levels notified (affecting three sub-categories) had been eliminated on the day of China's accession. China also made some observations, pursuant to Article 2.2, with respect to Canada's notification. Though some of the points raised by China had already been raised with Canada by the TMB, China's notification was brought to the attention of Canada.

149. After having received corrections and supplements from Canada to the original notification and after consideration of the observations made by China on the Canadian notification, at its meeting of July 2002 the TMB completed its review of the notification received from Canada. The TMB observed, *inter alia*, that the notification, as corrected and supplemented, contained details including the relevant restraint levels in force on the day prior to China's accession to the WTO, as well as the relevant growth rates and flexibility provisions. It also contained information on the effect of the implementation of the integration programmes on the restrictions notified[100], in particular the fact that, as for other WTO Members, Canada did not adjust downwards the levels of those restraints on imports from China when products were removed from the coverage of these restraints during the third stage of integration. The TMB also made a number of observations regarding the implementation by Canada of the growth-on-growth provisions provided for in Articles 2.13 and 2.14.[101] In taking note of the notification received from Canada, the TMB observed also that most of the observations made by China, with reference to Article 2.2 had been taken into account by Canada in the corrigendum it had provided to its original notification.

(2) Restrictions on imports from Chinese Taipei

150. In January 2002, the TMB started its examination of a notification received pursuant to Articles 2 and 3 from Canada, following the accession of Chinese Taipei to the WTO. The notification revealed that on 31 December 2001, i.e. on the day prior to the accession of Chinese Taipei, Canada had maintained 41 specific limits and sub-limits on imports from Chinese Taipei. The TMB decided to seek clarification from Canada concerning some aspects of the notification, including whether the quantitative restrictions notified fell under Article 2.1 or 3.1 of the ATC, and the extent to which these restrictions had been affected by the ATC integration process. At a subsequent stage, Chinese Taipei made a few observations under Article 2.2, which were brought to the attention of Canada. Also as a follow-up to these observations, at its meeting of May 2002 the TMB took note of

[100] See paragraphs 100, 106 to 108 above.

[101] The implementation of the growth-on-growth provisions by restraining Members in relation to imports from newly acceded Members is dealt with in a separate subsection of this report. See paragraphs 201 to 245 below.

the explanation received from Canada, according to which the minor differences in corresponding quota levels for 2001 between the information supplied by Canada and Chinese Taipei, respectively, stemmed from the accumulated impact of rounding differences over time. Accordingly, the TMB also took note of the statement by Canada that the volumes referred to in the submission by Chinese Taipei were correct and were those which Canada had implemented for 2001.

151. In July 2002, the TMB completed its review of the Canadian notification. Having sought clarification and additional information from Canada and having considered the observations made by Chinese Taipei on the Canadian notification, the TMB also took note of the statement by Canada that "all the quantitative restraints with Chinese Taipei had been maintained under Article 4 or notified under Articles 7 or 8 of the MFA, and therefore, were all being notified pursuant to Article 2 of the ATC only". The TMB also observed that the notification, as corrected and supplemented, contained details including the restraint levels in force on the day prior to Chinese Taipei's accession to the WTO, as well as the relevant growth rates and flexibility provisions. It also contained information on the effect of the implementation of the integration programme for the third stage on the restrictions notified[102], in particular the fact that, as for other WTO Members, Canada did not adjust downwards the levels of those restraints on imports from Chinese Taipei when products were removed from the coverage of these restraints during that stage of integration. In taking note of the notification received from Canada, the TMB also observed that the observations made by Chinese Taipei pursuant to Article 2.2 had been taken into account by Canada in the corrigendum it had provided to the original notification.

(ii) Notifications by the European Communities

(1) Restrictions on imports from China

152. At its meeting of January 2002, the TMB started its examination of a notification received pursuant to Article 2.1 from the European Communities following the accession of China to the WTO. It appeared to the TMB that the European Communities had notified the quantitative restrictions in force on 11 December 2001 (i.e. not on the day prior to the date of entry into force of the WTO Agreement in respect of China, which was 10 December 2001). The TMB decided to seek clarifications from the European Communities regarding some aspects of this notification, *inter alia*, on the extent to which the restrictions maintained had been affected by the ATC integration process. China also made several observations under Article 2.2. The European Communities subsequently provided a number of supplements to its original notification, one of them raising the need for the TMB to seek additional clarifications from the EC. As a result of the requirement for such back and forth communications, the TMB could only complete the review of the notification of the European Communities at its meeting of November 2002. The notification indicated that on the day prior to China's accession, the European Communities had maintained restrictions *vis-à-vis* China on 28 categories and sub-categories with reference to the bilateral agreement between the EC and China, "on MFA products".

153. Having sought clarifications and additional information from the European Communities and after considering the observations made under Article 2.2 by China *vis-à-vis* this notification, the TMB noted the EC's statement that, pursuant to Article 2.1, it had notified the restrictions taken over from its previous bilateral agreement with China, which had their roots "within bilateral agreements maintained under Article 4 or notified under Article 7 or 8 of the MFA". The TMB observed that the notification, as supplemented and corrected, contained details of the restrictions in force on the day prior to the date of China's accession to the WTO, including the respective restraint levels, together with their growth rates and the related flexibility provisions. The notification also specified the restraint levels applied for 2002 and identified those restrictions which had been eliminated on the day of China's accession to the WTO as a result of the EC's implementation of the first and second stage

[102] See paragraphs 101, and 106 to 108 above.

integration programmes.[103] It was also observed that, in addition to the EC quantitative restrictions for direct exports by China ("direct quantitative limits"), the notification also provided for additional EC quantitative levels for goods re-imported under outward processing traffic ("OPT additional quantitative levels") for almost half of the product categories subject to restraints. Also indicated were the respective annual growth rates that applied to these additional quantitative levels. Furthermore, the European Communities also notified those separate quantities which had been made available for the year 2001 for a number of product categories and were meant to be used exclusively for European fairs. It was further noted that the flexibility provisions notified for the respective regular quotas affecting these product categories were also applicable for the quantities notified for use for European fairs. Moreover, remarks attached to the listing of the "direct quantitative limits" indicated that in several product categories the restraint levels notified for 2001 included certain specified quantities which were reserved for the European industry for a defined time-period of the calendar year.

154. Also keeping in mind some related observations made by China, the TMB recalled, *inter alia*, that the European Communities had notified the respective quota levels for participation in European fairs for 2001 as being the levels in force on the day prior to the date of entry into force of the WTO Agreement for China. In light of the explanations provided by the European Communities, it was assumed that such quota levels had a zero growth rate. On the basis of this, the TMB decided to seek the EC's confirmation of the Body's understanding that the European fairs' quota levels notified for 2001 had already been made available to China in 2002, and that this would continue in 2003 and 2004, in addition to the regular quota levels; it being further understood that such additional quotas may be used by China exclusively at European fairs. In reply, the European Communities stated the following:

> "The quantities [for the European fairs' quotas] are granted annually on an *ad hoc* basis. In practice, however, they have remained unchanged over the years, and although no commitment can be given formally as to the future, [the European Communities is] in a position to inform [the TMB] that in the basic regulation of application of the textiles import regime under preparation for the year 2003, these quantities are being proposed reconducted without modification. In all probability this will also be the case for the year 2004, although no firm undertaking can be given as of now."

155. The TMB understood that the term "basic regulation of the application of the textiles import regime" was meant to refer to the EC's implementing regulation that is issued and published annually and specifies the respective restraint levels applicable in the forthcoming calendar year. The EC's reply appeared to suggest that since European fairs' quotas constitute additional amounts above that of the regular quota levels, in a strict legal sense, the EC had no obligation concerning the annual levels of these quotas, rather they were amounts defined and granted annually on an *ad hoc basis*. In this regard, the TMB reiterated that the quota levels for participation in European fairs applied on the day prior to the date of China's accession had been included in the EC's notification pursuant to Article 2.1. Furthermore, the European Communities itself had stated that in practice the European fairs' quota levels had remained unchanged over years. Thus, the levels applied in 2001 were also maintained for 2002 and were being proposed to be re-conducted without modification in the year 2003. While noting the EC's reply, in particular the indication given for the year 2003, the TMB expected that the same levels would continue to be maintained also in 2004. Accordingly, the TMB requested that the European Communities inform it in due course, at the latest in December 2003, of the quota levels to be formally approved for participation in European fairs in the year 2004.

156. In taking note of the notification received from the European Communities, the TMB also observed that China's observations, made pursuant to Article 2.2, had been taken into account by the

[103] See paragraph 115 above.

European Communities in the supplementary communications it had provided to the original notification.

157. Subsequently, in the context of a reply to questions put by the TMB to the European Communities regarding the consequences of the enlargement of the European Union to the new member States on the quantitative restrictions maintained by the European Communities under the ATC, information was provided also on the levels made available to China for the year 2004 for participation at European fairs. Based on this information, it could be observed that these levels had remained unchanged since 2002.

(2) Restrictions on imports from Chinese Taipei

158. Also in January 2002, the TMB started its examination of a notification received pursuant to Article 2.1 from the European Communities following the accession of Chinese Taipei to the WTO. It appeared to the TMB that the European Communities had notified the quantitative restrictions in force on 1 January 2002 (and not those in force on the day prior to the date of entry into force of the WTO Agreement in respect of Chinese Taipei, which was 31 December 2001). The TMB decided to seek clarification from the European Communities regarding some aspects of this notification, *inter alia*, on the extent to which the restrictions maintained had been affected by the ATC integration process. Subsequently, Chinese Taipei also made observations under Article 2.2, which were brought to the attention of the EC.

159. The TMB completed the review of this notification at its meeting of July 2002. The notification revealed that on the day prior to the accession of Chinese Taipei, the EC had maintained restrictions on 41 categories and sub-categories affecting imports from Chinese Taipei. Having sought clarification and information from the European Communities and after consideration of the observations made by Chinese Taipei regarding this notification, the TMB observed that the notification, as supplemented, contained the quantitative restrictions on imports of textile and clothing products originating in Chinese Taipei under arrangements between Chinese Taipei and the European Communities that were in force on the date prior to the date of accession of Chinese Taipei to the WTO, including the respective growth rates and flexibility provisions. Information was also provided regarding the effect on the restrictions notified of the implementation of the EC's integration programmes.[104] The notification contained, in addition, the restraint levels, respective growth rates and flexibility provisions implemented as of 1 January 2002. The TMB also observed that the observations by Chinese Taipei, made pursuant to Article 2.2, had been taken into account by the European Communities in the supplementary communication it had provided to the original notification.

(iii) Notifications by Turkey

(1) Restrictions on imports from China

160. At its meeting of February 2002, the TMB started its examination of a notification received pursuant to Article 2.1 from Turkey following the accession of China to the WTO. According to the notification, on the day prior to China's accession, Turkey had maintained restrictions on 41 categories and sub-categories on imports from China of "textiles and clothing products covered by the MFA". The TMB decided to seek clarification from Turkey, *inter alia*, regarding the reasons why it had considered it appropriate to notify quantitative restrictions under Article 2.1, keeping in mind the provisions of paragraph 241 of the Report of the Working Party on the Accession of China, as well as those of Article 2.1 of the ATC, which deal with "quantitative restrictions within bilateral agreements maintained under Article 4 or notified under Article 7 or 8 of the MFA in force on the day before the entry into force of the WTO Agreement". The TMB also decided to seek clarification from Turkey,

[104] See paragraphs 116 and 118 above.

inter alia, on the extent to which the restrictions maintained had been affected by the ATC integration process.

161. China also submitted a number of observations under Article 2.2 with respect to various aspects of the Turkish notification. Turkey provided several supplements to its original notification, but some aspects of the notification could not be easily clarified. In particular, through its additional observations, China wanted to gain a full understanding of the methodology applied by Turkey in calculating the growth rates that had been applied by it on the level of the respective restrictions on the day prior to the date of China's accession to the WTO. These and other related aspects could only be finally clarified at the time of the TMB's meeting of February 2003, when the Body could complete the review of the notification made by Turkey.

162. In taking note of this notification, the TMB recalled, *inter alia*, that it had sought clarification from Turkey on the reasons why it had considered it appropriate to notify quantitative restrictions under Article 2.1, keeping in mind the provisions of paragraph 241 of the Report of the Working Party on the Accession of China, as well as those of Article 2.1 of the ATC. Turkey stated that it had "made its notification under the Article 2.1, in conjunction with its parallel implementation with the EU. Within the provisions of the Customs Union and the Decision 1/95 of the Association Council, Turkey was required to apply the quantitative restrictions as part of the common regulation of commerce of the Turkey-EC Customs Union on imports of certain textile products which the EC maintained pursuant to the ATC. The quantitative restrictions that were notified under the Article 2.1, which [were] in force on the day prior to China's accession to the WTO have been implemented as of 1 January 1996 with the creation of Customs Union". In response to the TMB's request for clarifications, China stated that "[o]n 1 January 1996, Turkey entered into customs union with the European Community. As a result, Turkey requested to establish quota restrictions on imports of textiles and clothing from China. On 17 July 1996, China and Turkey signed the bilateral textiles agreement with reference to the framework of *Agreement between the European Community and the People's Republic of China on Trade in Textile Products*." Having considered these two communications, the TMB observed that China had not taken issue from the fact that Turkey had notified the relevant quantitative restrictions under Article 2.1.

163. Clarification had also been sought from Turkey, *inter alia*, on the extent to which the restrictions maintained by Turkey on the imports from China had been affected by the ATC integration process. Turkey provided information with respect to the product categories that had been integrated at each of the three stages of integration.[105]

164. As regards the growth rates applied by Turkey, the TMB observed that China had indicated that as a result of the process of clarification, it had no objection to the explanations provided by Turkey on the methodology that Turkey had used to calculate the growth rates which were applied by it on 10 December 2001, i.e. taking as a basis the "agreed 1994 growth rates", presumably first applied in 1996, increased by 16 and subsequently by 25 per cent in 2001. China also accepted that the differences in the calculation of the growth rates resulted from the fact that Turkey had "rounded the quota levels calculated […] mostly to the upper number for its application and that the Chinese calculations had been based on those rounded quota levels. Thus, in most cases, applied (published) quota levels [were] higher than calculated levels and this result[ed] in a difference between the Turkish methodology and growth rate calculated according to published quota level".

165. On the basis of the above, the TMB noted, *inter alia*, that there was no disagreement between the two Members regarding the growth rates applied by Turkey on the day prior to the date of China's accession. It was understood that these growth rates had been increased by 27 per cent in order to calculate the restraint levels for the year 2002. In taking note of the notification provided by Turkey, the TMB also observed that China's observations, made pursuant to Article 2.2, had been fully

[105] See paragraphs 128 and 131 above.

addressed by the TMB and that they had been taken into account by Turkey in the communications it had provided in addition to the original notification.

(2) Restrictions on imports from Chinese Taipei

166. In April 2002, the TMB began its examination of a notification received pursuant to Article 2.1 from Turkey following the accession of Chinese Taipei to the WTO. The notification revealed that on the day prior to the accession of Chinese Taipei, Turkey had maintained restrictions on 39 categories and sub-categories on imports from Chinese Taipei. The TMB decided to seek clarifications from Turkey, *inter alia*, on the extent to which the restrictions maintained had been affected by the ATC integration process. The TMB further decided to bring to the attention of Turkey the observations received from Chinese Taipei, pursuant to Article 2.2, regarding the Turkish notification.

167. At its meeting of July 2002, the TMB took note of this notification. Having sought clarification and information from Turkey and after having considered the observations made by Chinese Taipei with regard to this notification, the TMB observed that the notification contained the restrictions applied by Turkey on the imports of certain textile and clothing products taken over from Turkey's bilateral agreement with Chinese Taipei that was in force on the day before the accession of Chinese Taipei to the WTO, including the respective growth rates and flexibility provisions. The notification also contained, *inter alia*, information on the product categories integrated under Stages 1, 2 and 3 on 1 January 2002.[106] In taking note of the notification provided by Turkey, the TMB also observed that the observations made by Chinese Taipei pursuant to Article 2.2 had been taken into account by Turkey in the addendum it had submitted to the original notification.

(iv) Notifications by the United States

(1) Restrictions on imports from China

168. In February 2002, the TMB started its examination of a notification received pursuant to Article 2.1 from the United States following the accession of China to the WTO. On the basis of this notification, it could be established that on the day prior to China's accession, the United States had maintained altogether 101 specific limits and sub-limits on imports from China. Furthermore, the United States had also applied four aggregate (group) limits, covering all the specific limits and sub-limits and, in addition, also a number of further categories not subject to specific limits. The TMB decided to seek clarification from the United States, *inter alia*, on the extent to which the restrictions maintained had been affected by the ATC integration process. Subsequently, China also made a number of observations under Article 2.2 and the United States provided further comments in response to China's observations. Some of the key elements involved, such as the interaction between specific limits and group limits as notified by the United States and the downward adjustment of quota levels for partially integrated products, were considered in detail by the TMB at its meeting of September 2002.

169. As regards the interaction between specific limits and group limits, the TMB noted that China had stated that it had "noted that the base level for Group I is less than the total base level for all the covered 78 specific limits. In particular, in view of the fact that the average annual growth rate for those specific limits is 1.66 per cent while the Group Limit has just 1 per cent annual growth rate, the Group Limit will, along with the time, cut into the full utilization of Specific Limits covered". In a subsequent communication, China added that "[a]s China has become a WTO Member since 11 December 2001, the issue shall be examined under WTO framework, specifically the ATC". The TMB also noted that the United States had stated that under Article 2.1, "the obligation is on the United States to notify 'quantitative restrictions within bilateral agreements […] in force on the day

[106] See paragraphs 129 and 131 above.

before the entry into force of the WTO Agreement […] including the restraint levels.' The Working Party Report on China's accession provides that the phrase 'day prior to the date of entry into force of the WTO Agreement contained in Article 2.1 of the ATC should be deemed to refer to the day prior to the date of China's accession.' Accordingly, the notification for the specific limits and the Group limit for Group I […] reflects the base levels in effect on 10 December 2001. These base levels, and the associated growth rates and flexibility provisions, reflect a negotiated balance of mutual concessions acceptable to the People's Republic of China and the United States and will henceforth be governed by the provisions of the ATC".

170. Bearing these communications in mind, the TMB recalled that Article 2.1 requires Members to notify in detail "all quantitative restrictions within bilateral agreements maintained under Article 4 or notified under Article 7 or 8 of the MFA in force on the day before the entry into force of the WTO Agreement", and that paragraph 241 of the Report of the Working Party on the Accession of China to the WTO states, *inter alia*, the following: "Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel products originating in China that were in force on the date prior to the date of China's accession should be notified to the Textiles Monitoring Body ('TMB') as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ('ATC'). For such WTO Members, the phrase 'day prior to the date of entry into force of the WTO Agreement', contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession" (emphasis added). The TMB observed that the US' notification made pursuant to Article 2.1 of the ATC and to paragraph 241 of the Report of the Working Party on the Accession of China to the WTO contained the restrictions in place on imports from China on 10 December 2001, together with the respective restraint levels, growth rates and flexibility provisions. The TMB noted that such restrictions were composed of group and specific limits. It was observed that China did not call into question the fact that the restrictions notified and also the restraint levels and growth rates reported had been in force on the day prior to the date of China's accession. The TMB further observed that Article 2.4 of the ATC states that "[t]he restrictions notified under paragraph 1 [of Article 2] shall be deemed to constitute the totality of such restrictions applied by the respective Members on the day before the entry into force of the WTO Agreement. No new restrictions in terms of products or Members shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions."

171. While noting the concerns expressed by China regarding the potential adverse effects on trade, the TMB could not identify any provision in the ATC which would prohibit the group and specific limits that were in force on the day before the entry into force of the WTO Agreement from remaining in force with that of the implementation of the growth-on-growth provisions of the ATC, up and until the integration of the respective products the into GATT 1994. The TMB, noting that China had made its observations under Article 2.2, did not find it appropriate, in view of the considerations outlined above, to make recommendations to the Members concerned.

172. With respect to the downward adjustment of quota levels for partially integrated products, the TMB noted that China had stated that "the base levels for some Specific Limits and certain Group Limits have been substantially reduced due to partial integration. For example, the base level for Group III was reduced by 81.74 per cent. Such measures adversely affect China's export of non-integrated products covered therein". The TMB also noted that the United States had stated that "[a]s provided for in Article 4.3, the quotas that were affected by partial integration have been reduced to reflect the more limited product coverage. As with other WTO Members, the United States applied a standard methodology for adjusting specific and group limits to reflect partially integrated products. The US practice is to adjust group and specific limits affected by partial integration by reducing them by the average amount of volume of trade in the integrated product for the previous two calendar years, specifically, 1999 and 2000 in this instance". The TMB noted, in this regard, that the level of the quantitative restrictions notified had remained unchanged until 31 December 2001, and that the downward adjustments of quotas had taken place apparently on 1 January 2002 with the

implementation of the provisions of Article 2.8(b) by the United States. Therefore, China's observation was not directly related to the restraint levels taken over from the pre-ATC regime, as notified by the United States pursuant to Article 2.1, but rather a matter to be dealt with pursuant to the provisions of Article 4[107].

173. During its meeting of October 2002, the TMB reverted to its examination of this notification, also on the basis of additional information received from the United States in response to a question put by the TMB concerning one US product sub-category. According to the explanations provided by the United States, as a result of the integration in Stage 3 of products belonging to one US sub-category, the United States had inadvertently deducted the average trade for these products not from the corresponding group limit, but from another one. The TMB noted that on 29 August 2002 the United States had made an administrative correction and deducted the average trade for those products from the proper group limit, while re-crediting the group limit from which the inappropriate deduction had been made.

174. Since one important aspect related to the US notification remained unresolved (this was related to the methodology applied by the United States in providing the increase to the annual growth rates of the quotas maintained on imports from China[108]), the TMB could only complete the review of the notification of the United States at its meeting of January 2003, together with the adoption of a formal recommendation to the United States regarding the implementation of the necessary adjustments in its methodology applied in providing the increase in quota growth rates.[109] In taking note of the US notification, the TMB recalled that all the relevant issues raised by the notification had been addressed by the Body, including the extent to which the restrictions notified had been affected by the implementation of the integration programme of the United States.[110]

(2) Restrictions on imports from Chinese Taipei

175. In April 2002, the TMB began its examination of a notification received pursuant to Article 2.1 from the United States following the accession of Chinese Taipei to the WTO. The notification revealed that on the day prior to the accession of Chinese Taipei, the United States had maintained altogether 74 specific limits and sub-limits on imports from Chinese Taipei. In addition, the United States had also applied five aggregate limits (of which three group limits and two sub-group limits). The TMB decided to seek clarifications from the United States, *inter alia*, on the extent to which the restrictions maintained had been affected by the ATC integration process.

176. The review of this notification was completed in September 2002. Having sought clarifications and information from the United States and mindful of the fact that Chinese Taipei had informed the TMB that it had no comments or observations to make in the sense of Article 2.2, the TMB observed that the notification, as supplemented, contained the quantitative restrictions on imports of textile and clothing products originating in Chinese Taipei under arrangements between Chinese Taipei and the United States that were in force on the date prior to the date of accession of Chinese Taipei to the WTO. In addition to the restraint levels, the notification contained the respective growth rates and flexibility provisions in force on 31 December 2001. Also, in reply to the TMB's request, information was provided on the quantitative restrictions eliminated on 1 January 2002 as a result of the integration by the United States of certain products during Stages 1, 2 or 3 of the integration process.[111]

[107] For the TMB's observations on this issue, made in the context of Article 4, see paragraph 463 below.
[108] See in detail paragraphs 202 to 227 below.
[109] See paragraph 225 below.
[110] For this latter aspect, see paragraphs 121 and 124 above.
[111] See paragraphs 122 and 124 above.

(3) Restrictions on imports from the Former Yugoslav Republic of Macedonia

177. At its meeting of June 2003, the TMB began its examination of a notification received pursuant to Article 2.1 from the United States following the accession of the Former Yugoslav Republic of Macedonia (FYROM) to the WTO. The notification indicated that on the day prior to FYROM's accession, the United States had maintained five specific limits on imports from the acceding Member. The TMB decided to seek clarifications from the United States, *inter alia*, on the extent to which the restrictions maintained had been affected by the ATC integration process.

178. In September 2003, the TMB reverted to its examination of this notification in light of the replies received from the United States to questions submitted to it by the TMB. According to the additional information provided by the United States, the limits notified were those in force on 3 April 2003, i.e. on the day before the entry into force of the WTO Agreement for the FYROM. None of these restrictions had been eliminated as a result of the integration by the United States of certain products under Stages 1, 2 or 3 of the ATC, since the relevant categories were not part of the respective integration programmes. The TMB took note of these clarifications. Subsequently, after having considered the issue of the implementation of the growth provisions to the quantitative restrictions notified by the United States[112], the TMB took note of the notification.

(b) Changes in restrictions previously notified with reference to Article 2.1

(i) Elimination of restrictions by way of integration

179. When a product that had been subject to a restriction notified with reference to Article 2.1, became integrated into GATT 1994 during Stage 3 of the integration process, trade in that product was removed, as a result of integration, from the scope of the provisions of the ATC. Therefore, the respective restrictions previously maintained under the ATC had to be eliminated with respect to such a product. As reported in detail in Section I of this Part of the report[113], Members maintaining restrictions falling under Article 2.1 included a number of products previously subject to restraints in their respective Stage 3 integration programmes. Also, with respect to imports from newly acceded Members, the implementation of restraining Members' Stage 1 and Stage 2 integration programmes resulted in the elimination of a few restrictions.[114]

(ii) Elimination of restrictions without integration: recourse to the provisions of Article 2.15

180. Article 2.15 reads as follows:

> "Nothing in this Agreement shall prevent a Member from eliminating any restriction maintained pursuant to this Article, effective at the beginning of any agreement year during the transition period, provided the exporting Member concerned and the TMB are notified at least three months prior to the elimination coming into effect. The period for prior notification may be shortened to 30 days with the agreement of the restrained Member. The TMB shall circulate such notifications to all Members. In considering the elimination of restrictions as envisaged in this paragraph, the Members concerned shall take into account the treatment of similar exports from other Members."

[112] See paragraphs 235 to 245 below.
[113] See paragraphs 106 to 108, 118, 124 and 131 above.
[114] See paragraphs 100, 101, 115, 116, 121, 122 and 131 above.

181. It should be also recalled that the Doha Ministerial Conference, in its decision on implementation-related issues and concerns, agreed, *inter alia*, that "the provisions of the Agreement relating to [...] the elimination of quota restrictions should be effectively utilized".[115]

182. During the period of implementation of Stage 3 of the integration process, only one notification has been received by the TMB that is (also) relevant in the context of the implementation of the provisions of Article 2.15. In April 2003, Canada brought to the TMB's attention its notification submitted to the WTO Committee on Trade and Development in respect to improvements to the Canadian preferential scheme for least developed countries (LDCs), effective from 1 January 2003. The notification submitted to the TMB mentions explicitly that "in relation to Article 2.15 of the Agreement on Textiles and Clothing, Canada's initiative provides for quota-free access for all products covered by the Agreement."

183. In light of the notifications received from Canada pursuant to Article 2.1 and the list of the beneficiaries of the Canadian scheme in favour of the least developed countries, it appears that two WTO Members – Bangladesh and Lesotho – had been affected by the measure implemented with reference to Article 2.15. As a result, all the remaining restrictions on imports from Bangladesh and Lesotho had to be eliminated on 1 January 2003. In the case of Bangladesh, this measure affected altogether seven specific limits or sub-limits (sub-category 1.2 – jackets, anoraks; category 2.0 – winter outwear; merged sub-categories 3.2/4.2 – men's, boys' and children's ensembles and women's, girls' and children's jackets and blazers; category 5.0 – trousers, breeches and shorts; sub-categories 5.1/5.2 as a sub-limit; sub-category 8.4 – athletic wear and category 9.0 – underwear), while for Lesotho it resulted in the elimination of two specific limits or sub-limits (category 5.0 and sub-categories 5.1-5.3).

184. No measure has been taken under Article 2.15 since the beginning of the implementation of Stage 3 of the integration process by the European Communities, Turkey and the United States.

(iii) Elimination or non-application of restrictions to (certain) imports from certain WTO Members

185. The second comprehensive report adopted by the TMB contained the following:

> "The Trade and Development Act of 2000, adopted by the US Congress and which was implemented as of 1 October 2000, appears to offer, as part of the Caribbean Basin Trade Partnership Act (CBPTA), duty-free and quota-free treatment to Caribbean countries, with some products eligible for benefits on an unlimited basis and others subject to an annual regional cap. Another portion of the Trade and Development Act of 2000 (the African Growth and Opportunity Act) is related to treatment offered to imports from 48 Sub-Saharan African countries which, according to indications, provides, *inter alia*, that certain clothing items produced in beneficiary countries are eligible to enter the US market, both duty free and quota free, provided that certain conditions are met. The TMB requested detailed information from the United States regarding the African Growth and Opportunity Act and the Caribbean Basin Trade Partnership Act, in particular on the impact of their entering into force on the implementation of specific provisions of the ATC, such as the application of restrictions notified under Article 2.1. The United States answered, *inter alia*, that it would provide full information to the WTO at the time it would seek a waiver from WTO Members for the operation of various aspects of the Trade and Development Act of 2000. According to the US communication, in the interim, detailed information concerning the Trade and Development Act may be found on US Otexa's website."[Footnote omitted][116]

[115] See WT/MIN(01)/17.
[116] See G/L/459, paragraphs 269 to 271.

186. In a related footnote to the same report[117] it was observed that "[s]ince website information is not a substitute for official notifications and communications to be addressed to appropriate WTO bodies, [...] the TMB preferred to wait for the official communications of the United States as indicated in the US reply."

187. Up until June 2004 the TMB has not received any follow-up communication or information from the United States. Also, the TMB is unaware of any related notification or communication by the United States addressed to any other relevant body of the WTO. However, both Acts have been implemented for several years and it would appear that their provisions relating to textiles and clothing have been heavily relied upon. It would also appear that the implementation of these provisions have affected the application of at least some of the restrictions notified pursuant to Article 2.1.

188. It should be mentioned in this context that at its meeting of April 2003, the TMB had already "recalled that, *inter alia*, Article 3.3 states that '[d]uring the duration of this Agreement, Members shall 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.' The TMB stressed the importance of Members' adherence to the notification requirements contained in the ATC. It was also observed that measures or actions, other than those falling under the provisions of Article 3.3, having a bearing on the implementation of other provisions of the ATC should also be brought to the TMB's attention, for its information."[118] At its meeting of September 2003, the TMB reverted to this matter. It observed that since the report of its meeting of April 2003 had been issued, no related notification or information from Members had been received. The TMB assumed, however, that agreements had been reached between certain Members or policies adopted and developed by some Members, falling under the provisions of Article 3.3 or having a bearing on the implementation of other provisions of the ATC, without being notified to any WTO body or brought to the attention of the TMB. The TMB, therefore, urged the Members concerned to provide to the TMB, pursuant to Article 3.3, any relevant notifications submitted to any other WTO bodies with respect to such agreements or policies and/or to bring to the TMB's attention those measures or actions having a bearing on the implementation of other provisions of the ATC, in particular on that of Article 2.[119]

189. In the context of the preparation of the present report, the TMB submitted to the United States that it had observed, *inter alia*, that the United States had adopted and begun to implement the Andean Trade Promotion and Drug Eradication Act (ATPDEA), containing also provisions relating, *inter alia*, to trade in textiles and clothing products and, thereby, in all likelihood having also an impact on the implementation of certain restrictions notified under Article 2.1. Similarly, the TMB was aware that certain provisions of AGOA related to trade in the sector, such as the one enabling the beneficiaries to use materials other than those made in the United States or in the African region, will expire by the end of September 2004 and that steps have been undertaken with a view to extending and, perhaps also amending them. The TMB had so far received no official notification or communication regarding the implementation by the United States of the Caribbean Basin Trade Partnership Act (CBPTA), which provides duty-free and quota-free treatment to Caribbean countries, as already noted by the TMB in its second comprehensive report. Such implementation affects also the application of at least some of the restrictions notified under Article 2.1. The TMB, therefore, asked the United States to provide information in this regard. The US stated in reply that "the United States intends to notify these programmes to the Council for Trade in Goods [...] as soon as possible."

[117] See G/L/459, footnote 114.
[118] See G/TMB/R/98, paragraph 29.
[119] See G/TMB/R/102, paragraph 8.

190. Noting that the United States intends to notify these programmes to the CTG as soon as possible, the TMB also observes that, at the date of adoption of the present report, the Body still has no official information at its disposal on the basis of which it could offer substantive comments with respect to the impact of the programmes in question on the implementation of the provisions of Article 2. The continued lack of official notification and information in this regard raises concern, at least as far as the ability of the TMB to comply with its mandate as defined in the ATC is concerned.

(iv) Suspension of the application of restrictions to imports from certain Members

191. The second comprehensive report of the TMB contained the following:

> "In response to the TMB's request for information and notification made in the context of the preparation of the [comprehensive] report and of issues related to Article 7, the European Community stated, *inter alia*, that it had "entered into a Memorandum of Understanding with one WTO Member, Sri Lanka, concerning market access in the textiles and clothing sector. This involved reduction and bindings of tariffs and commitments concerning non-tariff barriers on the side of Sri Lanka and the suspension of the application of the quotas on the EC side. The quotas have not been eliminated but their application has been suspended subject to ongoing compliance by Sri Lanka with the terms of the agreement. Therefore, the European Community considers that its agreement with Sri Lanka is not covered by the requirements of Article 2(15) of the ATC."[120][footnote omitted]

192. In its related comments, the TMB observed the following in the same report:

> "The TMB noted the response provided by the European Community, [...] indicating that the restrictions maintained on imports from Sri Lanka had not been eliminated, but had been suspended and that, in the view of the European Community, its agreement with Sri Lanka was not covered by the requirements of Article 2.15. In light of this indication, it would appear that these restrictions, as notified under Article 2.1, are *de jure* still in place. The TMB observed that Article 2 does not contain any provision which would envisage the suspension of the application of restrictions notified under Article 2.1. However, suspension implies a *de facto* non-application of the restraints previously notified and, therefore, could have an effect on the implementation of specific measures maintained under the ATC. In view of this, it would appear that, without prejudice to any provision of the ATC and to any subsequent consideration of the matter, the fact that restraints were suspended is a matter that should be notified or brought to the attention of the TMB and, through the TMB, to WTO Members."[121]

193. It should be also recalled that in the context of the preparation of the TMB's second comprehensive report, the European Communities stated, *inter alia*, that "the EC is engaged in active negotiation with a number of other WTO partners creating the potential for further agreements of a similar kind [to the Memorandum of Understanding concluded with Sri Lanka] and hopes thus to contribute to further improving market access in the sector in advance of 2005".[122] [footnote omitted]

194. Against this background and also keeping in mind the TMB's repeated requests for relevant notifications and information as reflected in paragraph 188 above, it should be observed that up until June 2004 the TMB has received no further communication or, if appropriate, information from the European Communities in this regard. Thus, no official information has been brought to the Body's attention as to whether the European Communities has continued, or not, during the implementation of Stage 3, to suspend the application of the restrictions notified under Article 2.1 on imports from Sri

[120] See G/L/459, paragraph 271.
[121] See G/L/459, paragraph 336.
[122] See G/L/459, paragraph 275.

Lanka. Furthermore, the European Communities has not provided any information on the outcome of the "active negotiation with a number of other WTO partners", as referred to in paragraph 193 above, potentially resulting in agreements similar to the one reached earlier with Sri Lanka and, thereby, possibly leading to the suspension of the application of restrictions notified under Article 2.1.

195. In the context of the preparation of the present report, the TMB decided to raise this question with the European Communities. Recalling the statement made by the European Communities in this regard, as mentioned in paragraph 193 above, and submitting the observations made by the TMB in paragraph 194 above, the TMB asked the European Communities to provide any relevant information. In its reply, the European Communities stated that "[r]eferring to the observation by the TMB about suspension of restrictions on imports from Sri Lanka, it is confirmed that this is the case equally during 2004 and that this also applies to imports from Brazil."

196. In noting the EC's reply, the TMB reiterated its observation that Article 2 does not contain any provision which would envisage the suspension or *de facto* non-application (as opposed to *de jure* elimination) of restrictions notified under Article 2. Furthermore, the TMB expressed its concern that, prior to the TMB's specific request for information, the European Communities did not find it appropriate to provide information on the treatment granted as from 1 January 2002 to imports from Sri Lanka, as well as on the fact that the same treatment had been extended to imports from Brazil.

(v) Increase in certain restraint levels, other than pursuant to the provisions of Article 2.14(b)

197. During the implementation of Stage 3 of the integration process, the TMB has not received any information from Members maintaining restrictions with reference to Article 2.1 regarding possible increases, other than those pursuant to the provisions of Article 2.14(b), that could be implemented in relation to some restraint levels affecting certain Members. In light of certain indications available in press reports, it would appear, however, that in a few instances such increases were presumably implemented.

198. Also, following the enlargement of the European Communities on 1 May 2004, in parallel with extending the restrictions applied by the EC on the imports by the ten new member States[123], the European Communities increased the levels of its restrictions, with a view to reflecting "traditional" trade flows (i.e. using a formula consisting of the average of the last three years' imports into the ten new member States originating in restrained third countries, adjusted *pro rata temporis*).

(vi) Adjustments implemented in the level of certain specific and aggregate restrictions as a result of integration of parts of restrictions notified with reference to Article 2.1

199. As already indicated in Section I of this Part of the report, Canada decided not to reduce the restraint levels of those restrictions, parts of which became integrated during Stage 3.[124] The United States, on the other hand, had apparently implemented downward adjustments in the levels of the respective specific and aggregate limits, with a view to reflecting the reduced product coverage of these limits resulting from partial integration of some of the products that belonged to the limits concerned.[125] Since Article 4.3 deals specifically with situations in which a product constituting only part of a restriction is being integrated following the provisions of Article 2, this matter is also dealt with in the Section of the report regarding the implementation of the provisions of Article 4.[126]

[123] See in particular paragraph 325 below.
[124] See in particular paragraphs 121 to 124 above.
[125] See also paragraphs 125 and 172 above.
[126] See paragraphs 462 and 463 below.

(c) Implementation of the growth-on-growth provisions (Articles 2.13 and 2.14) during Stage 3 of the integration process

(i) Implementation of the provisions of Article 2.14(b)

200. Pursuant to the provisions of Article 2.14(b), the growth rates of the respective restrictions carried over from the pre-ATC regime and already increased, first, by not less than 16 per cent annually during Stage 1 and, second, by a further not less than 25 per cent annually during Stage 2, had to be further increased by not less than 27 per cent annually during the implementation of Stage 3 of the integration process. Article 2 does not require that Members maintaining restrictions under that Article provide notifications regarding their compliance with the growth-on-growth provisions. However, under Article 2.21, any particular matter related to the implementation of any provision of Article 2 can be referred to the TMB by any Member. With the exception of China[127], no other Members have brought to the attention of the TMB any communication or information that would be relevant in the context of the implementation of the growth-on-growth provisions in general or Article 2.14(b) in particular. It is assumed, therefore, that the requirements defined in Article 2.14(b) have been met by the Members maintaining restrictions with reference to Article 2 in relation to all those restrained suppliers that had become Members of the WTO at the latest in the year 2000.

(ii) Implementation of the growth-on-growth provisions with respect to newly acceded Members

201. Since none of the notifications received with reference to Article 2.1 had contained any information in this regard, in each case the TMB had to seek clarification from the restraining Members on the manner in which the growth-on-growth provisions had been implemented by them with respect to newly acceded Members, such as China, Chinese Taipei and the Former Yugoslav Republic of Macedonia (FYROM). Of the three new Members, China also made a number of comments and observations under Article 2.2 with regard to this matter. Recalling that the ATC does not contain any disposition that provides guidance on how these provisions should be implemented in relation to Members acceding to the WTO several years after the entering into force of the WTO Agreement, the TMB noted that (i) these matters had been agreed during the accession negotiations for the purpose of application of the respective provisions of the ATC, including its Article 2; (ii) the language regarding the growth-on-growth provisions in the respective working party reports contained explicit references to the application of the relevant articles of the ATC; (iii) pursuant to Article 2.21, the TMB was mandated to keep under review the implementation of Article 2. Therefore, in order to discharge its responsibilities, the TMB was also required to examine and to reach an understanding on the modalities agreed and guidance provided by Members in the respective legal instruments of accession *vis-à-vis* the implementation of the growth-on-growth provisions of the ATC. To achieve this goal, the TMB considered thoroughly and one by one, the issue of implementation of such provisions in relation to the newly acceded Members.

(1) Implementation *vis-à-vis* China

202. In examining this matter in detail at its meeting of July 2002, the TMB recalled that according to the provisions of the report of the Working Party on the Accession of China, "to these base levels [i.e. to the levels of the restrictions that were in force on the day prior to the date of China's accession], the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession".

203. Furthermore, the TMB also recalled that the information provided by the restraining Members on how they had implemented these obligations could be summarized as follows:

[127] See paragraph 205 below.

- Canada reported that it had "increased the growth rate on the remaining restraint levels with China by 25 per cent and then by 27 per cent on 1 January 2002".

- The European Communities stated that it had "increased the growth rate on the remaining restraint levels with China by 25 per cent and then by 27 per cent on 1 January 2002".

- Turkey had initially reported that it had increased the growth rate on the remaining restraint levels on 1 January 2002 in the same manner as indicated both by Canada and the European Communities. However, in a subsequent communication, Turkey stated that it had "increased the growth rates on the remaining restraint levels with China by 16 per cent, 25 per cent and then 27 per cent in order to calculate the quota levels of 2002".

- The United States stated that: "Pursuant to the Working Party Report, which requires that the provisions of the ATC regarding growth rates 'be applied, as appropriate, from the date of accession,' it was determined to be appropriate to apply an accelerated growth rate of 25 per cent pro-rated for that period of time (11-31 December 2001) when China was a Member of the WTO in Stage 2. Thus, adjusted quotas for Stage 2 were calculated using the pro-rated Stage 2 growth rate. In order to determine China's quota growth rate for the years 2002-2004, we increased the pro-rated Stage 2 growth rate used to determine China's notional 2001 quotas by 27 per cent, which is what is required for Stage 3 under the ATC. […]". It was also implicit in the information provided by the United States that these increases had been implemented on 1 January 2002.

204. On the basis of the indications at the TMB's disposal, it could be established, therefore, that the four Members maintaining restrictions with reference to Article 2.1 had implemented the growth-on-growth provisions *vis-à-vis* China on the same date, i.e. on 1 January 2002. However, of the four Members, only Turkey had increased the growth rates applicable to the base restraint levels by 16 per cent, which was the growth factor provided for in Stage 1 of the integration process and foreseen in Article 2.13. For their part, Canada and the European Communities had adopted an identical approach by providing the 25 per cent increase in the respective growth rates in its entirety and then applied the additional 27 per cent growth factor which was due for Stage 3. The United States had followed a more restrictive approach by prorating the 25 per cent increase in the respective growth rates for the period of time (21 days) when China became a Member during the second stage of the ATC and had applied a further 27 per cent increase on the respective restraint levels already increased by this methodology of prorating. This approach had, obviously, an effect on the level of restraints established for the year 2002.

205. The TMB also recalled that in some of the notifications made pursuant to Article 2.2, China had offered comments and observations with respect to the implementation of the growth-on-growth provisions by the restraining Members concerned:

- With regard to Canada, China had stated that:

> "The growth rates of 16 per cent, 25 per cent and 27 per cent shall apply to China in turn at appropriate dates as specified in accordance with paragraph 241 of the Report of the Working Party on the Accession of China, or at least a growth rate of 25 per cent shall apply to China on 11 December 2001, which shall be increased by another 27 per cent on 1 January 2002."

- Concerning Turkey, the notification by China contained the following:

  "Paragraph 241 of the Report of the Working Party on the Accession of China reads as follows: 'For such WTO Members, the phrase 'day prior to the date of entry into force of the WTO Agreement', contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession.' Therefore Turkey should treat China as if China joined the WTO on 1 January 1995 and the trade benefits under the ATC shall apply to China equally."

- With regard to the United States, the first set of observations received from China contained the same formulations as those submitted in relation to Turkey. In a subsequent notification offering observations on the methodology adopted by the United States, China stated as follows:

  "With respect to the application of the second and third stage growth factors, China maintains that the 25 per cent and 27 per cent growth factors shall be fully applied with the following calculation methodology:

  2002 Quota Level = 2001 Quota Level x [1 + original annual growth rate x (1+25%)] x [1 + original annual growth rate x (1+25%) x (1+27%)].

  China urges that the United States apply the growth factors in this way."

206. It was also noted that China had not made any observations on how the European Communities had implemented the growth-on-growth provisions, though the European Communities had applied the same methodology as Canada.

207. In view of the above, the TMB understood that in order to reach a common understanding on all aspects of the requirements related to the implementation of the growth-on-growth provisions, it was necessary to consider three distinct issues, which were the following:

- whether the restraining Members were also required pursuant to the terms of the accession instruments, to apply the not less than 16 per cent increase in the original growth rates as provided for Stage 1 in Article 2.13;

- what was the methodology required for providing the increase in the respective growth rates for Stage 2 (Article 2.14(a));

- on which date the growth-on-growth provisions had to be actually implemented by the restraining Members.

208. With regard to the first issue, the TMB analysed in detail the language of the respective provision of the Working Party report.[128] It observed, *inter alia*, that the term "as appropriate" could inject an element of flexibility into the sentence (and hence into the legal commitments reflected therein). This notion of possible flexibility could not be defined with more precision; it seemed to be designed to respond to the particular occasion or the prevailing circumstances. In any event, the inclusion of the term "as appropriate" into the language could also imply that not necessarily everything provided for in this sentence should be implemented in the way, or within the time-frame, it should have been implemented, without having this term or qualification attached thereto. By using the term "as appropriate", the drafters had not only injected the possibility for some flexibility and

[128] See paragraph 202 above.

adjustments to be made in the actual implementation but had also left an important element of ambiguity in the respective language.

209. The TMB came to the view that, since the relevant provision of the Working Party report did not provide an unambiguous guidance, it was not possible to reach a clear and unquestionable conclusion on the issue of whether the restraining Members were also required to apply the not less than 16 per cent increase provided for in Article 2.13, to the growth rates taken over from the pre-ATC regime. The TMB noted that arguments could be presented in favour of a reading of the relevant provision that this increase should be implemented, as it had been done by Turkey. However, the TMB also noted that arguments could also be found in support of a reading to the contrary which corresponded to the position taken by Canada, the European Communities and the United States, respectively. The TMB expressed its concern that Members had left an important element of ambiguity in the language of the respective provision of the Report of the Working Party on the Accession of China, which did not enable the Body to take a firmer position regarding the methodology to be applied.

210. Turning to the second issue, i.e. the methodology to be applied in providing the increase in the respective growth rates for Stage 2, pursuant to Article 2.14(a), the TMB recalled that irrespective of the positions taken in respect of Article 2.13, each of the four Members maintaining restrictions with reference to Article 2.1 had reported that they had provided an increase in the respective growth rates applicable for Stage 2. However, this increase had not been implemented in the same manner: while Canada, the European Communities and Turkey had increased the respective growth rates by the "full" 25 per cent stipulated in Article 2.14(a), the United States prorated this 25 per cent for the period (altogether 21 days) during which China had been a Member in the second stage integration process under the ATC. Since this prorating had resulted in much lower increases in the respective growth rates and the corresponding restraint levels, the way in which the United States had applied the provisions of Article 2.14(a) had had an important impact on the restraint levels calculated for Stage 3 of the ATC implementation.

211. The TMB decided to consider whether the applicable provisions of the legal instruments of China's accession and those of the ATC had entitled the United States to adopt the methodology described above. The TMB observed in this regard, *inter alia*, the following:

- In considering whether the term "as appropriate" included in the Working Party report could provide a justification for an implementation that had significantly altered the modality prescribed in Article 2.14(a), the TMB recalled that it did not have sufficient information at its disposal to reach a definitive conclusion with regard to the meaning of the notion "as appropriate". However, the TMB was of the view that the notion "as appropriate" was related to one or to both of the following two matters: (i) which of the ATC Articles enumerated should apply in the given circumstances; (ii) what should be the date of their actual implementation or application. However, nothing in this reading suggested that it would also provide an authorization not to implement in full any of the Articles listed, once its application had been found to be "appropriate" for the purpose of application of the ATC. In other words, once the United States concluded that since China had become a Member during Stage 2 of the ATC, it had been appropriate to apply the provisions of Article 2.14(a) to China; these provisions should have been implemented in full (i.e. for the entire year of China's accession) and the language did not seem to imply or allow for any further flexibility in this regard. Therefore, in the view of the TMB, to "determine to be appropriate to apply an accelerated growth rate of 25 per cent pro-rated" for the period of 21 days, as reported by the United States, did not appear to be substantiated by the relevant provisions of the Working Party report.

- This conclusion was also supported by the clear language included into Article 2.14(a), which does not provide for any flexibility or discretion including that of prorating, in terms of its implementation.

- Canada, the European Communities and Turkey had extended the benefit of the full 25 per cent increase in the respective growth rates to China. More importantly, no other Member, the United States included, had ever in the past used prorated increase in the respective growth rates in relation to any other WTO Member. The United States had not applied this prorated methodology in 1995 or early 1996 with respect to exporters that had become Members only months after the date of the entering into force of the WTO Agreement, nor had it relied on such an approach even in relation to those suppliers that had joined during the second stage of the integration process (in some cases with provisions similar to those included in the Report of the Working Party of China).

212. In light of the foregoing, the TMB reached the conclusion that it had not been justified under the relevant provisions of the accession instruments and the ATC to prorate the 25 per cent increase for the short period of China's actual membership during Stage 2 and observed also that this approach had not been in conformity either with the established practice of ATC implementation by the United States.

213. Taking up, finally, the third issue, i.e. the date on which the growth-on-growth provisions had to be actually implemented by the restraining Members, the TMB recalled that though the date of China's accession had been 11 December 2001, the four Members maintaining restrictions on imports from China with reference to Article 2.1 had implemented the growth-on-growth provisions only on 1 January 2002. The TMB noted that the increase in the respective growth rates, as far as, when applicable, Stage 1 and in any event, Stage 2 were concerned, should have been ideally implemented on 11 December 2001. At the same time, in any possible reading of the relevant provision of the Working Party report, the term "as appropriate" could (also) be related to the very last part of the sentence which indicated that the respective commitments should be applied "as from the date of China's accession". Based on this flexibility inherent in the formulation, practical considerations could also be raised in support of why an actual implementation starting on 1 January 2002 could be found to be appropriate. Since the time difference between China's accession and the start of the implementation of the new annual restraint levels for the year 2002 did not exceed three weeks, this delayed actual implementation could be explained by practical administrative considerations and the time-lag could not be considered to be too excessive.

214. In light of the above considerations, the TMB concluded that though some of the measures in question could have already been implemented as from 11 December 2001, they had to be implemented at latest by 1 January 2002, and this had been done by Canada, the European Communities, Turkey and the United States.

215. After having carefully considered all the aspects involved, the TMB came to the conclusion that since the relevant provisions of the legal instruments of China's accession did not provide an unambiguous guidance, it was not possible to provide a clear answer to the question of whether the restraining Members had also been required to apply the not less than 16 per cent increase in the respective growth rates, as provided for in Article 2.13 for the Stage 1 integration process. The lack of a clear answer regarding this aspect had led the TMB to consider those minimum requirements which had to be implemented by the Members concerned. These minimum requirements could be summarized in the following: as from 1 January 2002, the base levels in force on 10 December 2001 had to be increased by the respective growth rates applied for the year 2001 (prior to China's accession), increased by the full 25 per cent applicable to Stage 2 and further increased by the 27 per cent applicable to Stage 3.

216. Since the United States had reported an implementation which did not meet the minimum requirements, as defined in paragraph 215 above, the TMB decided to invite it to reconsider its respective position in light of the TMB's comments, observations and conclusion and to implement the necessary adjustments in its respective methodology applied.

217. The TMB also noted that during its detailed discussion it had addressed the relevant aspects of the respective notifications received from China pursuant to Article 2.2 and had reflected on them to the extent possible. Therefore, the Body considered that the examination of these particular aspects of the Article 2.2 notifications which touched upon the methodology of implementation of the growth-on-growth provisions had been concluded.

218. The United States replied only with an important delay to the TMB's invitation to reconsider its position with respect to the implementation of the appropriate increase to the annual growth rates of the quotas maintained on imports from China and to implement the necessary adjustments to its methodology applied. Therefore, this response could only be examined by the Body at its meeting of January 2003. In its communication, the United States stated that it "ha[d] carefully examined the TMB's report analysing the application of the growth-on-growth provisions of the ATC and concluded that the methodology used by the United States as reported [earlier] [was] in line with the obligations of the United States as provided for in the Working Party Report of the Accession of China to the WTO. The US reasoning on this matter, as expressed in [its previous communications], remain[ed] unchanged. In light of this conclusion, the US [was] of the view that it would not be appropriate to make any adjustment to the methodology applied".

219. The TMB observed that no specific arguments had been provided by the United States to substantiate the reasons why it had concluded that the methodology used by the United States was in line with its obligations, as provided for in the Working Party Report of the Accession of China to the WTO. Rather, the United States had merely stated that its reasoning on this matter remained unchanged and that, therefore, it was of the view that it would not be appropriate to make any adjustment to the methodology applied. On its part, the TMB reiterated its conclusion that it had not been justified under the relevant provisions of the accession instruments and the ATC to prorate the 25 per cent increase applicable to Stage 2 for the short period of China's actual membership during that stage. It was recalled in this regard that this conclusion had been reached by the TMB after careful consideration of the relevant provision of the Report of the Working Party on the Accession of China and of the language of Article 2.14(a) of the ATC and that it was further supported by the fact that no WTO Member, not even the United States, had ever in the past used prorated increase in the respective growth rates in relation to any other Member. Therefore, the TMB continued to be of the view that, as regards the implementation of the growth-on-growth provisions provided for in Articles 2.13 and 2.14 with respect to China, the minimum requirements that had to be implemented, *inter alia*, by the United States were, that as from 1 January 2002, the base levels in force on 10 December 2001 had to be increased by the respective growth rates applied for the year 2001 (prior to China's accession), increased by the full 25 per cent applicable to Stage 2, and further increased by the 27 per cent applicable to Stage 3.

220. The TMB recalled that in two of its notifications made pursuant to Article 2.2, China had made observations with respect to the implementation of the growth-on-growth provisions by the United States. These observations had also been addressed by the TMB during its discussion of the implementation of the growth-on-growth provisions. The TMB noted that according to Article 2.2, the Body, *inter alia*, "may make recommendations, as appropriate, to the Members concerned". Noting that both China and the United States had had ample opportunities to make their observations and respective arguments known and also that the TMB's conclusion had been reached with full knowledge of the observations and arguments presented in the respective notifications of the two Members concerned, the TMB decided to recommend to the United States to implement the necessary adjustments in its respective methodology applied, with a view to bringing it in line with the TMB's conclusion regarding the minimum requirements that had to be met.

221. At the end of March 2003, the TMB received a communication from the United States, with reference to the provisions of Article 8.10, following the recommendation of the TMB reflected in paragraph 220 above. In its communication, the United States submitted the following with respect to the recommendation made by the TMB:

> "In assessing whether WTO Members have complied with their obligations to China under the ATC, due consideration has to be given to the applicable provisions of the Report of the Working Party on the Accession of China to the WTO. While appreciating the challenge facing the TMB in this regard, it has to be recalled that the TMB also recognized that 'the relevant provisions of the legal instruments of China's accession, in particular the term "as appropriate" in the third sentence of paragraph 241 of the Report of the Working Party on the Accession of China, had not provided unambiguous guidance regarding some of the aspects involved'. In the view of the United States, this paragraph of the Working Party report not only makes it clear that the increase in growth rates should be applied from the date of China's accession, but the inclusion of the phrase 'as appropriate' also implies that this obligation should be implemented in a manner that corresponds to the length of time of China's actual WTO membership during the given stage of the ATC integration process. This is why the United States believes it is appropriate to apply an accelerated growth rate of 25 per cent pro-rated for the period of time when China was a Member of the WTO in Stage 2.
>
> In view of the above, the United States continues to be of the view that the methodology used is consistent with paragraph 241 of the Working Party report and that, therefore, it would not be appropriate to make any adjustment to the methodology applied.
>
> On this basis, the United States considers itself unable to conform with the recommendation [of the TMB] and requests that the TMB reconsider its recommendation."

222. At its meeting of April 2003, the TMB considered thoroughly the reasons given by the United States for its inability to conform with the Body's recommendation. After having summarized the background of the matter referred to it, the TMB stated, *inter alia*, that it agreed with the United States that the implementation of the provisions of Article 2.14(a) *vis-à-vis* China could only be assessed by giving due consideration to the applicable provisions (i.e. paragraph 241) of the Report of the Working Party on the Accession of this Member to the WTO. In fact, the methodology to be applied could only be defined if the respective provisions of the ATC and those of the Working Party report were read in conjunction. The TMB emphasized that it had sought to reach an understanding on the modalities agreed and guidance provided by Members in the accession instruments regarding this matter. Reaching an understanding within the TMB concerning the likely intention of the Members in this regard was, of course, not tantamount to providing an interpretation of the respective language, which is the exclusive authority of the Members.

223. The TMB also noted that the US communication referred to the fact that the TMB had also recognized the following: "the relevant provisions of the legal instruments of China's accession, in particular, the term 'as appropriate' in the third sentence of paragraph 241 of the Report of the Working Party on the Accession of China, had not provided unambiguous guidance regarding some of the aspects involved". It was observed that the United States quoted this statement from the report of the respective meeting of the TMB (during which the recommendation addressed to the United States had been adopted) and that the United States did not quote the entire sentence in question which continued as follows: "[the TMB, however,] had been able to reach a conclusion on those minimum requirements which, in its view, had to be implemented by the Members concerned". Furthermore, while it was true that the TMB could not reach a definitive conclusion on the meaning of the notion "appropriate", the Body had found it unlikely that this notion could also be related to the manner in which the provisions of Article 2.14(a) had to be implemented by the restraining Members.[129] It was

[129] See paragraph 211 above.

this common understanding reached by the TMB that led to the adoption of the recommendation addressed to the United States.

224. The TMB noted that the only new substantive argument given by the United States in support of its methodology was the following: "In the view of the United States, […] paragraph [241] of the Working Party report not only makes it clear that the increase in growth rates should be applied from the date of China's accession, but the inclusion of the phrase 'as appropriate' also implies that this obligation should be implemented in a manner that corresponds to the length of time of China's actual WTO membership during the given stage of the ATC integration process". In examining this argument, the TMB made, *inter alia*, the following observations:

- As regards the reference to the length of time of China's actual WTO membership during Stage 2, the TMB did not disagree with the United States that this was an aspect to be considered. It could be argued that, in a sense, the condition defined by the United States had been satisfied, irrespective of the methodology applied for providing the increase in the respective growth rates for 2001, since China became entitled to enjoy the benefits of ATC implementation only as from 11 December 2001. An implementation that started from the date of China's membership in the WTO provided also a reasonable meaning to the term "as appropriate": once China became a Member, it was appropriate to increase the growth rates taken over from the pre-ATC regime.

- At the same time, there was no justification, in the view of the TMB, to give such a far-reaching reading to the relevant provisions of the Working Party report that would have entitled the restraining Members to apply the 25 per cent increase in the respective growth rates prorated to the length of time of China's actual membership during Stage 2. In examining the relevant provisions of the ATC and the Working Party report together, the TMB could not find any element or argument that would have supported the United States' position. It was a clear obligation under the provisions of the Working Party report that, "[t]o [the] base levels [applied on the date prior to China's accession], the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession." Nothing in this language, including the term "as appropriate" suggested that the implementation of the obligations of Article 2.14, according to which "the level of each restriction shall be increased annually […]" (emphasis added) could be altered.

- Therefore, the TMB continued to be of the view that the provisions of the Working Party report did not provide an authorization not to implement in full for the year 2001 the annual increase foreseen in Article 2.14(a). Once the United States concluded that since China had become a Member during Stage 2 of the integration process under the ATC, it had been appropriate to apply the provisions of Article 2.14(a) to China; these provisions should have been implemented in their entirety instead of prorating the 25 per cent annual increase for the period of 21 days.

- In light of the above, the TMB confirmed its view that for the year 2001 China had been entitled to benefit from the "full" 25 per cent increase in the respective growth rates.

225. Having given thorough consideration to the reasons presented by the United States for its inability to conform with the TMB's recommendation, the TMB concluded that these reasons did not lead it to change its recommendation adopted earlier. The TMB recommended, therefore, that the United States reconsider its position and implement forthwith the necessary adjustments in its

respective methodology applied, with a view to bringing it in line with the TMB's conclusion regarding the minimum requirements that had to be met.

226. At its meeting of June 2003, the TMB considered another communication received from the United States with reference to the recommendation of the TMB, as reproduced in paragraph 225 above. In this communication, the United States stated that it had given full consideration to the TMB's recommendation and that "the US position continues to be that the methodology used by the United States is consistent with our WTO obligations, including paragraph 241 of the Working Party report [on the Accession of China to the WTO]. Consequently, the United States does not intend to amend its methodology to conform to the TMB's recommendation".

227. In view of the fact that this matter had been examined by the TMB on several occasions and over a particularly long period of time, the TMB expressed regret that the matter remained unresolved. In taking note of the United States' communication, the TMB observed that, following the recommendation it had made under Article 8.10, it was neither required nor mandated to address the substance of the communication received from the United States, and recalled that, under that Article, "[i]f, 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."

(2) Implementation *vis-à-vis* Chinese Taipei

228. In examining this issue in detail at its meeting of July 2002, the TMB recalled that according to the respective provision of the report of the Working Party on the Accession of Chinese Taipei, "[t]o these base levels [i.e. to the levels of the restrictions that were in force on the day prior to the accession of Chinese Taipei], the increase in growth rates provided for in Articles 2.13 and 2.14 of the Agreement on Textiles and Clothing would be applied, in stages, from the date of accession of Chinese Taipei to the WTO."

229. Furthermore, The TMB recalled that the information provided by the Members maintaining restrictions with reference to Article 2.1 on imports from Chinese Taipei regarding the way they had implemented the growth-on-growth provisions could be summarized as the following:

- Canada reported that: "With respect to the quota 'growth-on-growth' provisions stipulated in paragraphs 13 and 14 of Article 2 of the ATC, Canada increased the growth rate on the remaining restraints with Chinese Taipei by 27 per cent on 1 January 2002." In a subsequent communication, Canada stated the following: "As regards Canada's application of the growth-on-growth provisions, […..] paragraph 167 of the Report of the Working Party stipulates that 'the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC would be applied, in stages, from the date of accession of Chinese Taipei.' Since Chinese Taipei only became a Member of the WTO on 1 January 2002, the relevant stage is the third stage of integration under the ATC. Therefore Canada applied the third stage growth-on-growth provision and increased the growth rates of the remaining restraints on imports from Chinese Taipei by 27 per cent on 1 January 2002."

- The European Communities stated that: "With respect to the quota 'growth-on-growth' provisions stipulated in paragraphs 13 and 14 of Article 2 of the ATC, the EU increased the growth rate on the remaining restraint levels with the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, by 27 per cent on 1 January 2002." Furthermore, in a subsequent communication, the European Communities provided the same word-for-word explanation as that which had been provided by Canada.

- Turkey explained that: "With respect to the quota 'growth-on-growth' provisions stipulated in paragraphs 13 and 14 of Article 2 of the ATC, Turkey increased the growth rate on the remaining restraint levels with Chinese Taipei by 16 per cent, 25 per cent and then by 27 per cent on 1 January 2002."

- The information provided by the United States contained the following: "The Working Party report on the accession of Chinese Taipei provides that the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC are to be applied from the date of accession, as appropriate. Chinese Taipei acceded to the WTO on 1 January 2002. Accordingly, the growth rates were increased by 27 per cent."

230. The TMB recalled that the notifications provided by Chinese Taipei pursuant to Article 2.2 had not contained any observation with respect to the implementation of the provisions of growth-on-growth. The TMB also recalled that Chinese Taipei had become a WTO Member on 1 January 2002. Therefore, on the basis of the notifications provided by the restraining Members, it could be established that, in conformity with paragraph 167 of the Working Party report, each of the four Members concerned had notified the restrictions in place on 31 December 2001, i.e. the date prior to the date of Chinese Taipei's accession. Moreover, it was also noted that the restraint levels applied on 31 December 2001 had constituted the respective base levels for the purpose of the application of Article 2 of the ATC, including that of implementation of the growth-on-growth provisions. The TMB further noted that Canada, the European Communities, Turkey and the United States had implemented these provisions on the same day, i.e. on 1 January 2002, and that they were in line with the respective language of the Working Party report ("as from the date of accession of Chinese Taipei"). Nevertheless, it was observed that while Canada, the European Communities and the United States had increased the growth-rates taken over from the pre-ATC regime by only 27 per cent provided for Stage 3 under Article 2.14(b), Turkey had increased the respective growth rates first by 16 per cent, then by 25 per cent (as provided for in Articles 2.13 and 2.14(a), respectively), and by a further 27 per cent applicable for Stage 3.

231. On the basis of the information at its disposal, the TMB was of the view that in order to reach a common understanding on the matter considered, it had to address the issue of whether restraining Members were also required, according to the terms of the legal instruments of Chinese Taipei's accession, to apply the not less than 16 percent followed by the not less than 25 per cent increase in the respective growth rates as provided for Stages 1 and 2 of the integration process in Articles 2.13 and 2.14(a).

232. In examining in detail the language of the respective provision of the Working Party report, the TMB recognized this language could be read in a manner that would require restraining Members to implement the increase in the respective growth rates for all three stages at the same time, as had been done by Turkey. Such a reading could be supported by the fact that Articles 2.13 and 2.14 are explicitly mentioned in the text. Since the term "in stages" appears to refer to the respective integration stages, the use of this term in plural could be designed to indicate that the increase in the growth rates has to be implemented for all the relevant stages. Also, one meaning of the term "stage" refers to a process that consists of a series of steps in which one step is built above the other. Furthermore, it was also noted that even if it could be argued that these provisions required the implementation of each of the subsequent increases specified in Articles 2.13 , 2.14(a) and 2.14(b), the language remained unclear as to whether this had to be done in one step, at the same time, or in successive steps ("stages") which could be distinct from each other regarding their respective timing (and if this applied, what should be the duration of each step). Reflecting further on this particular aspect, the TMB considered it unlikely that the intention was to extend only the benefits of the not less than 16 per cent increase applicable for Stage 1 for an unspecified period of time, following which, first, the not less than 25 per cent and second, the not less than 27 per cent increases should be provided again for unspecified time-periods.

233. Notwithstanding the considerations above, the TMB recognized that there could also be a completely different reading of the same provision where the respective increases had to be applied only for that stage or those stages (of the integration process) when Chinese Taipei was actually a Member of the WTO. Following this reasoning, integration and all related measures under the ATC had to be implemented "in stages" according to a clearly defined time-frame, irrespective of whether Chinese Taipei was already a Member or not. Chinese Taipei was entitled to receive the respective benefits only from the date of its accession and only those benefits that were applicable to the "stage" when it became a Member. Since Chinese Taipei became a Member on the first day of the implementation of Stage 3 of the integration process, the respective growth rates had to be increased by not less than the 27 per cent applicable to that stage pursuant to Article 2.14(b), as done by Canada, the European Communities and the United States. It was inherent in this reasoning that had Chinese Taipei become a Member earlier, i.e. during the implementation of the second stage, it would have benefited from the application of the provisions of Articles 2.14(a) and 2.14(b) "in stages": from the application of the Stage 2 growth factor as from the date of its accession, while the increase applicable for Stage 3 was only due from 1 January 2002. On the other hand, Chinese Taipei could not claim the benefits that had been extended prior to its accession, since it had not assumed the obligations arising from the implementation of the ATC prior to the date of its accession.

234. After careful consideration of the matter, the TMB came to the conclusion that, since the relevant provisions of the legal instruments of Chinese Taipei's accession did not provide unambiguous guidance in this regard, it was not possible to give a clear answer to the question of whether restraining Members had also been required to apply the not less than 16 per cent, followed by the not less than 25 per cent increase in the respective growth rates, as provided for in Articles 2.13 and 2.14(a) for Stages 1 and 2, respectively. The lack of a clear reply regarding this aspect led the TMB to consider those minimum requirements which had to be implemented by the Members concerned. The TMB concluded that these minimum requirements implied that on 1 January 2002, the base levels in force on 31 December 2001 had to be increased by the respective growth rates applied in 2001, as further increased by 27 per cent which was applicable for Stage 3. The TMB noted that the manner in which Canada, the European Communities, Turkey and the United States had implemented the respective provisions met these minimum requirements.

(3) Implementation *vis-à-vis* the Former Yugoslav Republic of Macedonia

235. It should be recalled that only one Member, i.e. the United States had notified restrictions maintained on certain imports from FYROM. In response to the TMB's question regarding the implementation of the growth-on-growth provisions of the ATC to the quantitative restrictions notified, the United States explained that the "annual growth rate for 2004 quotas [would] be 2.54 per cent' and that, for the 2003 limits, the effective annual growth rate had been increased by prorating the growth rate of 2.54 per cent to reflect the number of days in 2003 that FYROM would be a Member of the WTO, 'resulting in a prorated growth rate for 2003 of 2.40241096 per cent."

236. In examining this matter in detail at its meeting of October 2003, the TMB recalled that FYROM became a Member of the WTO on 4 April 2003 and, pursuant to the provisions of the legal instrument of accession, to the base level of the restrictions notified under Article 2.1, "… the increase in growth rates provided for in Article 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of FYROM's accession". It was noted that Article 2.14 provides for the annual increase in the respective growth rates taken over from the pre-ATC regime for both Stages 2 and 3 of the ATC integration process, while FYROM became a Member during the second year of the implementation of the third stage of the integration process (i.e. during the 100th month of ATC implementation). The TMB also observed that, unlike in the case of China, and also Chinese Taipei, the relevant provision of the Report of the Working Party on the Accession of FYROM makes no mention of Article 2.13 at all. Therefore, it could be established that the terms of accession agreed between the WTO Members and FYROM do

not provide for the application of the 16 per cent growth factor stipulated in Article 2.13 and applicable for Stage 1 of the integration process under the ATC.

237. The same provision refers, however, to the application of Article 2.14, without being more specific or providing any further guidance. In light of this, the issues to be addressed by the TMB were the following:

- Whether the United States was required, pursuant to the terms of the accession instruments, to apply the not less than 25 per cent increase in the growth rates taken over from the pre-ATC regime, as provided for in Article 2.14, subparagraph (a), for Stage 2, when FYROM had not been a Member of the WTO;

- whether the United States was required under the same terms to apply the not less than 27 per cent increase in the respective growth rates as provided for in Article 2.14, subparagraph (b) for Stage 3, also for 2002, which had been the first year of the implementation of the third stage of the integration process, though FYROM had not, as yet, become a Member;

- what was the methodology required for providing the increase in the respective growth rates for the year 2003, when FYROM joined the WTO.

238. In considering the first issue, the TMB analysed the language of the respective provision of the Working Party report. Bearing also in mind, *mutatis mutandis*, the considerations the Body had made in its review of the implementation of the growth-on-growth provisions in relation to China, the TMB arrived at the view that this language in itself provided neither a clear answer nor unambiguous guidance as to whether the restraining Member, i.e. the United States, was also required to apply the not less than 25 per cent increase in the original growth rates as provided for in Article 2.14(a) of the ATC. By using the term "as appropriate", the drafters had not only introduced the possibility for some flexibility and adjustments to be made in the actual implementation but had also left an important element of ambiguity in the respective language. Therefore, the TMB could not, in these circumstances, reach a clear conclusion on the issue of whether the United States was required to apply the not less than 25 per cent increase provided for in Article 2.14(a) to the growth rates taken over from the pre-ATC regime in the case of FYROM.

239. Turning to the second question, the TMB observed that though there is no clear response as to the applicability of subparagraph (a) of Article 2.14, subparagraph (b) of that same Article, by definition, applies, since FYROM had become a Member of the WTO during Stage 3. However, arguments and counter-arguments can be equally used regarding the question as to whether there was a commitment to apply the 27 per cent increase in the growth rates also for 2002, given that FYROM had not yet become a Member of the WTO during that year. Therefore, since both readings can be made given the flexibility brought about by the notion "as appropriate", there was no clear and unambiguous answer to this question either. This lack of clear guidance made it difficult for the TMB to take a firmer position on this matter, and it could not, therefore, reach a clear conclusion on the issue as to whether the United States was required to apply for 2002 the not less than 27 per cent increase in the respective growth rates, as provided for in Article 2.14, subparagraph (b).

240. With respect to the last issue and also in light of the uncertainties related to the first two matters addressed, the TMB considered the question of the minimum requirements which, in any event, had to be met by the United States. Therefore, it had to be considered whether the provisions of the Report of the Working Party on the Accession of FYROM and Article 2.14 of the ATC entitled the United States to use the methodology of prorating for 2003. In considering this aspect, the TMB had in mind, in particular, the observations it had made when examining the issue of the implementation of the growth-on-growth provisions of the ATC with respect to newly acceded Members, in particular China. Following a similar line of arguments, *mutatis mutandis*, as in the case

of China, the TMB was of the view that since FYROM had become a Member in 2003, during Stage 3 of the ATC and, therefore, it had been appropriate to apply the provisions of Article 2.14(b) to it, these provisions should have been implemented in their entirety (i.e. for the entire year of FYROM's accession) and that the language of the Working Party report and that of Article 2.14(b) did not seem to allow for any further flexibility in this regard. Thus, in the view of the TMB, once the United States had concluded that it had been appropriate to apply the provisions of Article 2.14(b) to FYROM for 2003, the 27 per cent increase in the respective growth rates should have been implemented in full for the year 2003, instead of prorating it for the period of FYROM's actual membership during that year.

241. The TMB, therefore, invited the United States to reconsider its position and to implement the full 27 per cent increase in the respective growth rates applicable to Stage 3 also for the year 2003. The TMB expected that the United States would report back to it on the results of this re-examination as soon as possible.

242. The United States reacted with some delay and, therefore, its answer could only be considered by the TMB at its meeting of February 2004. In its communication, the United States stated the following with respect to the conclusions reached by the TMB:

> "The US has carefully reviewed the TMB's finding on this matter and has concluded that it cannot agree with the TMB's reasoning. The US used the same methodology for FYROM as was used to calculate accelerated growth for China after its WTO accession. [The United States] continues to believe that this is the most appropriate methodology to use."

243. In examining this communication, the TMB observed that in support of the conclusion that it could not agree with the TMB's reasoning, the United States stated that it had used the same methodology for FYROM as was used to calculate accelerated growth for China after its WTO accession and the United States continued to believe that this was the most appropriate methodology to use. Since this was the only argument specifically mentioned in the communication received from the United States, the TMB observed that the United States had not provided any reason or consideration that had not already been raised by it earlier or would have been ignored by the TMB during previous stages of its examination of the same matter either in relation to FYROM or to China.

244. In light of the above, and in particular, the reference made by the United States to the methodology it had used in relation to China, the TMB noted that the detailed examination and analysis it had made with respect to the methodology applied by the United States *vis-à-vis* China applied, *mutatis mutandis*, to the present case. The TMB reiterated, *inter alia*, its view that nothing in the language of the respective provisions of the Report of the Working Party on the Accession of FYROM, including the term "as appropriate", suggested that the implementation of the increase in growth rates provided for in Article 2.14, according to which "the level of each restriction shall be increased annually […]" (emphasis added) could be altered. Therefore, in the view of the TMB, the provisions of the Working Party report did not provide an authorization not to implement in full for the year 2003 the annual increase stipulated in Article 2.14(b).

245. The TMB expressed its concern that the United States had not implemented for the year 2003 the full 27 per cent increase in the respective growth rates applicable to Stage 3. Recalling that pursuant to the provisions of Article 8.1, the TMB was established "[i]n order to supervise the implementation of this Agreement, to examine all measures taken under this Agreement and their conformity therewith, and to take the actions specifically required by it by this Agreement [...]", it was noted that in addressing the methodology used by the United States, the TMB had to rely on the applicable provisions of the ATC and the related provisions of the Report of the Working Party on the Accession of FYROM. The TMB had examined the relevant aspects of this matter, including the issue of conformity. It was also recalled that though the matter had been brought to the attention of FYROM, no communication had been received from it. Hence the Body confined itself to the

mandate specified in the first sentence of Article 2.21 under which the specific action required from the TMB is to keep under review the implementation of the provisions of Article 2.

(iii) The respective decision of the Doha Ministerial Conference and its follow-up

246. The Decision by Ministers on Implementation-Related Issues and Concerns adopted on 14 November 2001, requested the Council for Trade in Goods to examine, *inter alia*, the proposal "[...] that Members will calculate the quota levels for the remaining years of the Agreement [on Textiles and Clothing] with respect to other restrained Members as if implementation of the growth-on-growth provision for Stage 3 had been advanced to 1 January 2000."[130] The decision requested the CTG to make recommendations (also with respect to this matter) to the General Council by 31 July 2002 for appropriate action.[131]

247. While the follow-up that was given to this decision is summarized in another Section of this report[132], it should be noted that the implementation of the growth-on-growth provision for Stage 3 had not been advanced and, therefore, begun only on 1 January 2002, as foreseen in Article 2.14(b).

(d) Implementation of the flexibility provisions (Article 2.16) during Stage 3 of the integration process

248. Article 2.16 reads as follows:

> "Flexibility provisions, i.e. swing, carryover and carry forward, applicable to all restrictions maintained pursuant to this Article, shall be the same as those provided for in MFA bilateral agreements for the 12-month period prior to the entry into force of the WTO Agreement. No quantitative limits shall be placed or maintained on the combined use of swing, carryover and carry forward."

249. In addition, Article 2.1 requires, *inter alia*, that the respective quantitative restrictions "[...] be notified in detail, including [...] flexibility provisions, by the Members maintaining such restrictions [...]." Restraining Members complied with their respective obligations to notify to the TMB, among other matters, the flexibility provisions either provided for in the former MFA bilateral agreements or, in the case of newly acceded Members, those in force on the day prior to the date of accession to the WTO.

250. No issue has been specifically referred to the TMB during Stage 3 with respect to the implementation of the provisions of Article 2.16 by Members that had become Members either at the time the WTO Agreement had entered into force or during Stage 1 as well as the first three years of the implementation of Stage 2 of the integration process. It would appear that flexibility provisions, in particular, carryover and carry forward have been widely relied upon by the Members whose exports continue to be subject to restrictions.

251. During the implementation of Stage 3 of the integration process, two distinct issues have arisen in relation to the implementation of the flexibility provisions:

- certain aspects of their implementation *vis-à-vis* newly acceded Members; and
- issues related to carry forward for the year 2004.

[130] See WT/MIN(01)/17.
[131] Ibid.
[132] See paragraphs 586 and 587 below.

(i) The flexibility provisions applied vis-à-vis newly acceded Members

252. The notifications of Members maintaining restrictions on imports, respectively, from China, Chinese Taipei and FYROM were supposed to reflect, *inter alia*, the flexibility provisions that had been in force on the day prior to the accession of the new Member(s). Thus, the notifications received from Canada contained information on the applicable provisions relating to swing, carryover and carry forward, as well as to "combined flexibility". The notifications made, respectively, by the European Communities and Turkey included indications on advance utilization (carry forward), carryover, transfers between categories (swing) and on the "maximum increase in any category". The US' notifications provided indications on swing, carryover, carry forward and on the limit of the use of carryover and carry forward. In examining these notifications one by one, the TMB sought clarification from the notifying Members concerned, among other matters, on whether or not a limit continued to apply on the cumulative use of the flexibility provisions. Canada, the European Communities and Turkey replied that in each case the limitations on the combined use of flexibility had been eliminated on the day of accession of the new Member concerned. The United States indicated that:

> "[a]s required by Article 2.16, all the flexibility provisions that were in effect under the [respective] bilateral textile agreement will remain in effect under the ATC, and the restriction on the specific caps on the combined use of carryover and carry forward [...] will be retained, however, there is no quantitative limit on the combined use of swing, carryover and carry forward."

253. In a related communication, made under Article 2.2, China observed, *inter alia*, the following:

> "The United States still maintains specific caps on the combined use of carryover and carry forward. In China's view, the original intention of [Article 2.16] is that quantitative limits shall be imposed neither on the combined use of all the three of swing, carryover and carry forward, nor on the combined use of any two."[133]

254. The TMB considered the observations made by China at its meeting of September 2002. It noted China's statement in this regard and recalled that it had decided to seek further clarifications from China, in particular regarding elements which supported China's view concerning the "original intention" of the ATC. It was noted that no reply had been provided by China to this request. The TMB also noted the respective statement made by the United States.[134] The TMB recalled that Article 2.16 states that "[n]o quantitative limits shall be placed or maintained on the combined use of swing, carryover and carry forward." In the view of the TMB, a plain reading of the sentence indicated that no quantitative limit should be placed or maintained on the combined use of swing, carryover and carry forward, at the same time. However, it was not clear whether the language of Article 2.16 allowed the use of a cap on the combined use of carryover and carry forward. It was observed that arguments could be found in support of either reading. Regarding the original intention of Article 2.16, as referred to by China, no reliable indications were at the TMB's disposal regarding the drafting history of this provision of the ATC. Therefore the TMB could not express a view on this argument. The TMB considered that it could revert to this matter in the light of possible additional elements and arguments that could be provided by the Members concerned.

255. Since then, no further communication has been received by the TMB regarding this matter from either of the Members concerned.

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[133] See G/TMB/N/445/Add.1.
[134] See paragraph 252 above.

(ii) Issues related to carry forward for the year 2004

256. As also detailed in another Section of this Part of the report[135], a communication was submitted in July 2003 to the General Council on behalf of several exporting Members, expressing developing Members' concern about potential reduction in market (quota) access in 2004. The problem identified in this communication stems from the fact that "the restraining importing Members contend that as all quotas will be eliminated at the end of 2004, there will be no carry forward available from 2005."[136] The communication describes the context of this matter, the significance of quota carry forward and the problems arising from the non-availability of this flexibility in 2004. As to the way forward, it requests that "the General Council consider the matter and recommend that developed Members take steps to ensure that there is no diminution of quota access for developing Members on account of quota carry forward in 2004."[137] So far, the General Council has provided no positive resolution to this request.

257. The TMB notes that the issue identified in the communication referred to above could indeed create a paradox situation whereby possibilities for access to the markets would be adversely affected during the last year of the ATC implementation. The Body is aware of the concerns that the economic impact of possible reductions in market access opportunities would be significant for the exporting Members concerned. Also, the absence of carry forward could generate upward pressure on prices in 2004 which, *inter alia*, would not facilitate the process of adjustment and preparation for the post-ATC period. In that sense, it could have an adverse effect on efforts that could be undertaken with a view to allowing for continuous autonomous industrial adjustment and increased competition in Members' markets, as foreseen in Article 1.5. The TMB is equally aware of the argument that reduction in market access can only occur if the quantitative limits concerned are being fully utilized and, that even in these cases, other flexibility provisions, such as carryover and swing, remain available. Furthermore, the level of the respective restrictions has already been increased for the year 2004 by the applicable growth rates and, thus, an absolute decline of the access opportunities is unlikely to happen.

258. The TMB observes that the ATC remains silent regarding the issue of whether carry forward should be provided, or not, during the last year of the implementation of the Agreement. The very general formulation of the language of Article 2.16 does not give any guidance in this regard.

259. There could be arguments, on the one hand, that in the absence of an explicit requirement to that effect, carry forward would not be available in cases where there was no quota to borrow from. Such an argument would be supported by the fact that most of the administrative arrangements notified by the United States with reference to Article 2.17 contain a provision stating that "no carry forward shall be available for application in the final agreement year/period." The administrative arrangements notified by Canada and the European Communities do not contain a similar provision. Most of the administrative arrangements notified by Canada define carry forward as "a quantity advanced from the corresponding restraint limit for the following annual restraint period." Some of the administrative arrangements notified by the European Communities state that the amounts in question shall be deducted from the corresponding limits for the following year. In these cases, it could be argued that since 2004 is the last annual restraint period, in a technical sense no quantity can be borrowed from 2005.

260. On the other hand, it could be also argued that while the ATC does not contain any explicit disposition concerning this matter, the denial of this flexibility would run counter to the basic concept of progressive liberalization embodied in the ATC. In fact, it would be absurd if a more restrictive application of the flexibility provisions had been foreseen for the last year of ATC implementation,

[135] See paragraph 589 below.
[136] See WT/GC/W/503.
[137] Ibid.

compared to the preceding years. In addition, what would justify such an approach in economic terms, since all the restrictions will have to be eliminated on 1 January 2005? With respect to the administrative arrangements, it could be argued that it had never been the intention, not even during the former MFA regime, not to grant the possibility of carry forward for any given year, since with the expiration of an agreement under the MFA, a new bilateral agreement entered into force, thereby also ensuring the availability of carry forward during the last year of implementation of the agreement which was due to expire. This argument is all the more relevant since most of the administrative arrangements notified under Article 2.17 were constituted of provisions which had been drawn from previous bilateral agreements concluded under the MFA.

261. To sum up, while it could be argued that the ATC does not explicitly require Members maintaining restrictions under Article 2 to allow carry forward in 2004, it could be equally argued that this type of flexibility should be available also in this last year of ATC implementation. The TMB expresses its hope that appropriate solutions to this matter, addressing the concern about potential reduction in market access opportunities in 2004, will be found and adopted by the General Council in the near future.

(e) Administrative arrangements agreed between Members and notified following the provisions of Article 2.17

262. Article 2.17 states that "[a]dministrative 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. Any such arrangements shall be notified to the TMB." Such administrative arrangements, since they are closely related to the implementation of the restrictions falling under the provisions of Article 2, had been agreed between the Members concerned during the early part of ATC implementation, and had been notified to the TMB which reviewed them pursuant to the provisions of Article 2.21. Therefore, these arrangements were already dealt with in the TMB's first comprehensive report.[138] The second comprehensive report also provided an overview of them, together with subsequent developments that occurred during Stage 2 of the implementation of the integration process.[139]

263. All the administrative arrangements previously notified have remained in force during the third stage of the integration process and have been relied on by the Members concerned with respect to matters covered by the respective arrangements. Also, with the accession to the WTO of new Members, new notifications were received with reference to Article 2.17 from Canada, the European Communities and the United States. It is noteworthy that Turkey, which also notified restrictions falling under Article 2, has not notified any administrative arrangement to the TMB. It is assumed that Turkey and the Members concerned did not deem it necessary to agree on such arrangements. It should be also noted that the United States, while maintaining restrictions on certain imports from FYROM, has not notified any administrative arrangement that would be in place between the two Members concerned.

(i) New notifications received with reference to Article 2.17 during Stage 3 of the integration process

(1) Canada – China

264. At its meeting of April 2002, the TMB began its review of the notification made by Canada of administrative arrangements agreed between Canada and China. It decided, *inter alia*, to seek clarifications from both Members regarding certain elements of the notification, including on how the provision of statistics on exports or imports of products not contained in the Article 2.1 notification of

[138] See G/L/179, paragraphs 214 to 222.
[139] See G/L/459, paragraphs 297 to 309.

Canada's quantitative restrictions on imports from China is deemed necessary in relation to the implementation of any provision of Article 2 of the ATC.

265. At its meeting of June 2002, the TMB completed the review, pursuant to Article 2.21, of this notification. It noted that in accordance with Article 2.17, the administrative arrangements notified by Canada had been bilaterally agreed between Canada and China. The TMB observed that the arrangements contained, *inter alia*, provisions regarding an export control system operated by China, the implementation of the flexibility provisions related to swing, carryover and carry forward, exchange of statistics, the treatment of re-exports and consultations. In reply to the TMB's request for clarification, Canada explained that the provision of statistics was intended, *inter alia*, to address issues concerning circumvention and transshipment. In this context, Canada noted that Article 5.1 of the ATC explicitly acknowledges the importance of this issue, indicating that "Members should establish the necessary legal provisions and/or administrative procedures to address and take action against such circumvention", and calls on all Members to cooperate fully to address these problems. China stated that this provision was "included in the notification mainly for the purpose of addressing and taking action against circumvention and transshipment." As regards the possible credit by Canada to the appropriate restraint limit of quantities covered by export licences for which the corresponding goods had not been shipped, Canada explained that in such situations, China would inform Canada through an electronic verification system that the relevant export licence had been cancelled and then it would re-credit automatically its quota so that it may re-allocate the amount to another shipment. China observed that, in view of the daily exchanges of licensing information relating to textile and clothing products between Canada and China, it was unnecessary for China to make additional notifications to Canada in the event that any quantity covered by an export licence had not been shipped. In practice, China had never received any such request from the Canadian side.

266. As regards the exchange of additional statistics, the TMB noted that both Members had provided very similar reasoning and explanations. The same applied to their respective assessment of the impact of the electronic verification system. The TMB also observed that while the Annexes to Canada's notification contained information on the restraint levels and related provisions to be applied in 2002, these Annexes did not form part of the administrative arrangements notified pursuant to Article 2.17.

(2) Canada – Chinese Taipei

267. At its meeting of November 2002, the TMB began its review of the notification made by Canada of administrative arrangements agreed between Canada and Chinese Taipei. It decided, *inter alia*, to seek clarification from the Members concerned on certain elements of this notification, including how the provision of statistics relating to the exports or imports of products not contained in the Article 2.1 notification of Canada's quantitative restrictions on imports from Chinese Taipei were deemed necessary in relation to the implementation of any provision of Article 2 of the ATC.

268. In concluding the review, pursuant to Article 2.21, of this notification at its meeting of December 2002, the TMB observed that the administrative arrangements contained detailed provisions regarding the operation by Chinese Taipei of an export control system, the implementation of the flexibility provisions notified by Canada pursuant to Article 2.1, exchange of statistics, the treatment of re-exports and consultations with respect to any matter arising from the implementation or operation of the ATC or of the administrative arrangements or any matter germane thereto. The TMB also noted that most of the provisions of administrative arrangements agreed between Canada and Chinese Taipei were designed to ensure the implementation of measures notified by Canada under Article 2 and the arrangements notified by Canada had been bilaterally agreed between the two Members concerned.

269. In reply to the TMB's questions, Canada stated, *inter alia*, that "[p]aragraph 13 of the Administrative Arrangements, which reserves the right of both parties to seek additional statistics from the other, including statistics for non-restrained products, is common to all of Canada's administrative arrangements pertaining to apparel and textile restraints. It is intended, *inter alia*, to address issues concerning circumvention and transhipment." Chinese Taipei stated that "[p]aragraph 13 [of the administrative arrangements] is derived from the bilateral arrangement prior to [Chinese Taipei's] accession to the WTO. For the purpose of facilitating textiles trade between both parties, we have agreed to keep this paragraph in the Arrangement and for this reason we consider it appropriate not to modify the Arrangement in this regard". As to the TMB's question concerning the provision of the administrative arrangements which states that "Canada will, so far as possible, inform Chinese Taipei when imports into Canada of restrained textile products are subsequently re-exported from Canada", so that Chinese Taipei could credit back the quantity involved to the appropriate quantitative limits, Canada replied that "[s]uch situations occur regularly, for example when Chinese Taipei cancels an export licence for a shipment which is subsequently not exported to Canada. In this case, Chinese Taipei would inform Canada through our electronic verification system that the relevant export licence had been cancelled and then would re-credit automatically its quota so that it may re-allocate the amount to another shipment. However, no credit would be authorized in a situation where Chinese Taipei were seeking to cancel an export license against which a shipment had already been entered into Canada. This is exceedingly rare in the case of Chinese Taipei given the aforementioned electronic verification system".

270. On the basis of the clarifications as above, the TMB took note of the administrative arrangements agreed between Canada and Chinese Taipei.

(3) European Communities – China

271. At its meeting of April 2002, the TMB began its review of the notification of administrative arrangements agreed between the European Communities and China. It decided, *inter alia*, to seek clarifications regarding certain elements of the notification. It sought clarification from both Members on the functioning of a "reserve" available exclusively to the EC's industry, for a defined time-period, before the relevant quantitative restriction can be fully utilized, and from the European Communities on how, in its view, the provisions related to circumvention contained in the administrative arrangements are deemed necessary in relation to the implementation of any provision of Article 2 of the ATC.

272. Since the process of receiving the clarifications sought by the Body required some time, the TMB could only conclude the review of this notification at its meeting of October 2002. It was noted that the administrative arrangements had been bilaterally agreed and that they had been jointly notified by the two Members concerned. The TMB observed that the administrative arrangements contained detailed provisions regarding product classification, rules of origin, a double-checking system, comprising the issuance of export licences and the corresponding import authorization, the operation of a "reserve" available exclusively to the EC's industry for a defined time-period, additional amounts reserved for use at European fairs, outward processing and imports to the European Communities for re-export after processing, products exempt from quantitative restrictions under certain conditions (cottage industry, handloom and folklore products), exchange of statistical information, circumvention, "regional concentration", consultation procedures and administrative cooperation. The TMB noted in this regard that most of the provisions of administrative arrangements were designed to ensure the implementation of measures notified by the European Communities under Article 2. It was observed, however, that not all the provisions of these administrative arrangements were fully or directly related to the implementation of provisions of Article 2, but that they also dealt with matters that were addressed in some other Articles of the ATC. In this context, the TMB noted that with the agreement of the parties, the administrative arrangements also applied *mutatis mutandis* to the quantitative limits notified by the European Communities under Article 3 of the ATC.

273. The TMB considered that detailed rules and procedures concerning classification of products, determination of their origin as well as export and import control were necessary for ensuring the proper administration of the restrictions notified and maintained under the ATC. In this context it was noted, *inter alia*, that the application of the special consultation procedures included into the administrative arrangements was explicitly mentioned in the text in relation to amendments to classification, with the stated objective of "agreeing [on] necessary adjustments to the appropriate quantitative limits established under Article 2 of the ATC and mitigating any disruptive effects which might arise from such a Community decision". The TMB recalled that Article 4.4 provides for consultations in such cases. It was observed that provisions of the administrative arrangements agreed pursuant to Article 2.17 could not affect or alter Members' respective rights and obligations arising from any provision of the ATC, including their right to refer matters to the TMB with reference to a specific provision of the ATC. It was noted that the special consultation clause included in the administrative arrangements between the European Communities and China is of a procedural nature and does not prevent any of the Members concerned from referring any specific matter to the TMB under the applicable provisions of the ATC.

274. A particular feature of the administrative arrangements agreed between the European Communities and China was the provision related to the operation in certain specific product categories of a "reserve" available exclusively to the EC's industry for a defined time-period. The TMB noted that the application of such an arrangement, together with the respective amounts allocated for this purpose in 2001, had already been part of the notification provided by the European Communities under Article 2.1. In reply to the request for clarifications, the European Communities indicated that "the industry reserve quotas are increased each year according to the same growth rates as in the respective main category, since the amounts constitute a percentage of the main category. [...] The quotas remain a priority for industry during a certain amount of time (180 days) from the beginning of the year. The EC Member States have to submit to the European Commission their applications for industry reserve quotas each year before the 31 December. Then, Chinese exporters [...] are entitled to apply for the industry reserve quotas to the relevant Chinese foreign trade administrative bodies, after signing sales contracts with EC industry users. After the sales contracts have been submitted to the respective administrative bodies within the time limit the industry reserve quotas are reserved, China then allocates the quotas to the respective operators according to its planning. If the total quantity applied for in a certain category is less than the remaining quantity of industry reserves for that category, all the applications are satisfied. On the contrary, if the total quantity applied for exceeds the remaining quantity available, the allocation is made on a *pro rata* basis". In its communication, China stated, *inter alia*, that "[i]n cases where the industry reserve is fully utilized within the time limit, no quota will be allocated to further application; only where the industry reserve is not fully utilized will it be credited to normal quota and utilized by Chinese exporters."

275. In light of these explanations, the TMB observed that aspects related to the elements involved in the operation of this system had been clarified and there appeared to be no disagreement between the two Members regarding its functioning. It was also recalled that the European industry "reserve" system had already been in place on the day prior to the date of China's accession and had been notified pursuant to Article 2.1. Also, though its proper implementation required appropriate cooperation between the authorities of the two parties, the allocation and administration of the respective reserve levels will be left with China, in accordance with the requirements of Article 4.1. The TMB observed, furthermore, that the availability of such reserve levels was time-bound; consequently the quantities reserved are either fully used up during the respective time-frame, or any unused portion can be allocated for exports to other potential EC buyers after expiration of the respective deadlines. Therefore, keeping also in view : (i) that in all cases, at least half of a year remained available for the purpose of filling up any unused portion of the respective "reserve" restraint levels with exports to buyers other than those of the EC's industry; and (ii) that in six product categories affected the levels to be "reserved" were below 7 per cent of the respective annual quota levels, while in two other categories the reserve applied up to 50 per cent of the related quota levels, it was considered unlikely that the overall impact of the operation of this system would hinder

the ability of the exporting Member to fully utilize the export possibilities available under the respective annual restraint levels.

276. The administrative arrangements contain provisions relating to circumvention which state, *inter alia*, that the two Members "agree to cooperate fully in preventing the circumvention of these administrative arrangements by transshipment, re-routing or whatever other means in accordance with Article 5 of the ATC". The TMB sought clarification from the European Communities as to how, in the EC's view, such provisions were deemed necessary in relation to the implementation of Article 2. Furthermore, since the arrangements also state that "[f]ollowing China's accession to the WTO, cases of circumvention taking place before the accession will also be dealt with according to [the circumvention provisions of the administrative arrangements]", the TMB requested information as to whether this specific provision had been invoked. The European Communities replied as follows: "As to the question whether provisions about circumvention have been invoked the answer is that this has not been the case after China's accession to the WTO. However, since Article 5 of the ATC explicitly deals with this question, information about this possibility is not irrelevant from the point of view of transparency."

277. The EC's reply, as above, had not been sufficiently clear in providing answers to the issues raised. It was observed, however, that in relation to another administrative arrangement reviewed a few months earlier by the TMB, in reply to similar questions posed by the Body, the European Communities had stated that "the provisions concerning circumvention were considered as complementary information for the functioning of Article 2 of the ATC. For transparency reasons, the parties had agreed to include these provisions as they might affect the manner in which quantitative restrictions were implemented. Similar dispositions existed in most of the administrative arrangements that the European Communities had notified to the TMB under Article 2.17". The TMB assumed that the European Communities had also intended to provide the same or similar arguments in the present case.

278. The TMB noted that the circumvention provisions notified contained explicit reference to Article 5. The provisions of the administrative arrangements, however, seemed to focus on one particular remedy or appropriate action in the sense of Article 5, i.e. on the adjustment of charges to restraint levels ("deduction of the relevant quantitative limits") to reflect the true country or place of origin. The TMB recalled that Article 5.4 speaks of "appropriate action, to the extent necessary to address the problem", but the adjustment of charges to restraint levels is only one of the possible actions that has been identified. Moreover, Article 5.4 lays down strict procedural requirements, including the need to notify any action agreed in the bilateral consultations, with full justification to the TMB. Also, if a mutually satisfactory solution is not reached, any Member concerned may refer the matter to the TMB for prompt review and recommendation. Recalling that the language of the administrative arrangements makes explicit reference to Article 5, the TMB expected that the circumvention provisions agreed and notified pursuant to Article 2.17 would be implemented by both Members in full compliance with Article 5.

279. A special clause of the administrative arrangements deals with the issue of "regional concentration". In essence, while the quantitative limits notified under Article 2.1 are not broken down by the European Communities into regional shares, in case of "a sudden and prejudicial change in traditional trade flows", the European Communities may request consultations with China in order to find a satisfactory solution to such problems. Furthermore, "if the Parties are unable to reach a satisfactory solution during the consultations, the People's Republic of China will, if so requested by the Community, respect temporary export limits for one or more regions of the Community". Explanation was requested as to how, in the view of the European Communities, this provision of the administrative arrangements would fit with Article 2.4. The European Communities replied that this provision "[…] underlines the advantage derived from the establishment of the internal market within the European Union, by which regional restrictions were abolished. In return this provision aims at avoiding excessive concentration of exports to specific regions implying radical changes in traditional trade patterns". Subsequently, the European Communities notified the following:

> "Concerning the regional concentration clause of the administrative arrangement between China and the Community it is naturally not in the intention of the Community to deviate from the pertinent provisions of the ATC. Consequently, [the Community] can confirm […] that the implementation of the administrative arrangement and its provisions are not meant to constitute a derogation from the provisions of the ATC."

280. The TMB recalled in this regard that the notifications provided by the European Communities pursuant to Article 2.1 (and also 3.1) contained quantitative restrictions applicable at the level of the European Communities, as a single entity and that they had not included any reference to the possibility of introducing temporary limitations that could apply to "one or more regions" of the European Communities. It was noted that the European Communities had never had recourse in the past to the provisions of the "regional concentration clause". Notwithstanding this, one could conceive circumstances in which the application of this provision would run against obligations undertaken by the European Communities under the ATC. The TMB recalled in this regard the provisions included in Article 2.4 as well as in the last sentence of Article 6.4. Therefore, it was important to note the statement of the European Communities that it was not the EC's intention to deviate from the pertinent provisions of the ATC. The TMB observed that this statement should provide guidance in assessing possible future recourse, if any, to the clause in question.

281. The TMB also noted the confirmation of the European Communities that "the implementation of the administrative arrangements and its provisions are not meant to constitute a derogation from the provisions of the ATC". In light of this, in taking note of the arrangements agreed between the European Communities and China, the TMB expected that the provisions of the administrative arrangements would be implemented by the Members concerned in full compliance with the relevant provisions of the ATC.

(4) European Communities – Chinese Taipei

282. At its meeting of April 2002, the TMB began its review of the notification made by the European Communities of administrative arrangements agreed between the European Communities and Chinese Taipei. The TMB decided, *inter alia*, to seek clarifications from the European Communities regarding certain elements of the notification, including (i) the obligation to adapt the definition of quantitative limits and of the categories of products to which they apply where this proves necessary to ensure that any subsequent amendment to the Combined Nomenclature or a decision amending the classification of such products does not result in a reduction of such quantitative limits and (ii) how, in the view of the European Communities, the provisions related to circumvention contained in the administrative arrangements are deemed necessary in relation to the implementation of any provision of Article 2 of the ATC.

283. The TMB completed its review, pursuant to Article 2.21, of this notification at its meeting of June 2002. TMB noted that the administrative arrangements notified by the European Communities had been bilaterally agreed between the European Communities and Chinese Taipei. It was observed that the arrangements contained, *inter alia*, provisions regarding the classification of products, export certification and import control, rules of origin, circumvention and transshipment, outward processing and products exempt from quantitative limits.

284. In response to the clarification sought by the TMB, the European Communities confirmed that the adaptation of the definition of quantitative limits following amendments of the Combined Nomenclature would be implemented in conformity with Articles 4.2 and 4.4 of the ATC and stated that the provisions concerning circumvention were considered as complementary information for the functioning of Article 2 of the ATC. Furthermore, the European Communities confirmed that, regarding the consultations foreseen for such cases in the administrative arrangements, if a mutually satisfactory solution is found between the two parties, this solution would be also subject to the provisions of Article 5 of the ATC. The TMB noted that, though the opportunity was provided to it,

Chinese Taipei had not made any observation with respect to the notification submitted by the European Communities. It was also observed that the implementation of the circumvention provisions of the administrative arrangements would be fully subjected to the relevant provisions of Article 5 of the ATC.

(5) United States – China

285. At its meeting of June 2002, the TMB began its review of the notification made by the United States of administrative arrangements with China. The TMB decided to seek clarifications from both Members with respect to certain aspects of the notification, including the products covered by the arrangements, the relevance for the implementation of any provision of Article 2 of the ATC and the operation of the provisions regarding cooperation in the prevention of circumvention, the ATC relevance of a provision enabling the United States to impose, in particular circumstances, triple charges on quotas, the possibility for the United States to introduce a restraint on such products in certain specific circumstances where a product would be transshipped through China, and the scope of application of visa requirements.

286. The TMB concluded the review, pursuant to Article 2.21, of this notification at its meeting of October 2002. It observed that the introductory paragraph of the notification stated that "the provisions [notified] are drawn from the United States – China bilateral textile and apparel Memorandum of Understanding of 1 February 1997 and have been agreed […] to be necessary for the proper implementation of restrictions notified to the Textiles Monitoring Body under Article 2.1 of the Agreement on Textiles and Clothing". The TMB recalled that all the administrative arrangements previously notified by the United States had also been characterized by the approach of keeping in force certain provisions of former bilateral agreements with a view to constituting the provisions of the administrative arrangements in the sense of Article 2.17. The TMB had already observed in this regard that such an approach "resulted in some respects in texts which are not easily understood and, also in some instances, appear to give the impression that some of the provisions of the administrative arrangements are not fully consistent with the others". In the case of the administrative arrangements with China, some elements included in the notification had already become obsolete independent of China's accession to the WTO, whereas several others did not reflect developments that had occurred as a result of China's membership. This explains why the United States had found it necessary to offer the following introductory comments in its responses to the TMB regarding the questions raised in relation to different elements in its notification: "The TMB may wish to bear in mind first, that the administrative provisions were drawn from an existing bilateral agreement, rather than being drafted anew and were not prospectively adjusted to account for changes that would occur upon China's accession to the WTO. Second, at the time the Memorandum of Understanding was concluded, neither Member anticipated the delay to China's eventual accession the WTO late in 2001."

287. The administrative arrangements contained detailed provisions regarding product coverage and related issues of classification and categorization, the structure of the restrictions applied (group limits and specific limits), flexibility adjustments, cooperation in the prevention of circumvention, the application of a visa system, commercial samples and personal shipments. In addition, annexes to the arrangements included a detailed description of the US textile and apparel category system (together with the conversion factors applied), an "exempt certification arrangement for Chinese floor coverings" and the full text of the visa arrangement agreed between the two Members. The TMB noted in this regard that most of the provisions of the administrative arrangements notified were related to the implementation of restrictions falling under Article 2.1. It was observed, however, that not all the provisions of the arrangements were fully or directly related to the implementation of provisions of Article 2, but that they also dealt with matters that were addressed in some other articles of the ATC. This applied, in particular, to the provisions related to cooperation in the prevention of circumvention.

288. As regards the product coverage, the respective provision states that "the textiles and textile products covered [by the arrangements] are those summarized in Annex A [of the notification provided under Article 2.17]". Since this Annex provides a full description of the entire US textiles and apparel category system, the TMB sought confirmation of its understanding from both Members that the products covered by the administrative arrangements were limited to those covered by the ATC and not yet integrated into GATT 1994 as a result of the implementation of the provisions of Articles 2.6, 2.8(a) and 2.8(b). In response, the United States stated that the TMB's understanding was correct, whereas China noted that some of the products listed in the Annex in question had already been integrated as a result of the implementation of the relevant Articles of the ATC. China also provided a list of product categories that had already been integrated or partially integrated. On the basis of these replies, it could be established that, in conformity with Article 2.17, the products covered by the arrangements were limited to those ATC products that had not been integrated as yet and were still subject to import restrictions notified by the United States under Article 2.1.

289. The administrative arrangements keep in force the previous visa system and the full text of the visa arrangements was notified as an attachment. This system requires China to issue a visa for each shipment of textiles or textile articles and this visa has to be presented to the US Customs Service before entry, or withdrawal from warehouse for consumption, into the customs territory of the United States. The visa arrangement specifies all the related requirements and procedures. Since, in the sense of Article 2.17, administrative arrangements are related to the implementation of provisions of Article 2, the TMB sought confirmation from the United States that no visa requirements would be applied to the imports from China for any of the products integrated into GATT 1994 by the United States as a result of the implementation of its Stages 1 to 3 integration programmes. In reply, the United States confirmed the TMB's understanding of this matter.

290. In light of the TMB's overview, *inter alia*, with respect to the issues reflected in paragraphs 288 and 289 above, it could be ascertained that the provisions of the administrative arrangements related to product coverage, flexibility provisions and the application of the visa system enable the exporting Member to administer the restrictions referred to in Article 2. The TMB noted that this was in line with the requirements of Article 4.1.

291. The most detailed and elaborated provisions of the administrative arrangements dealt with the issue of cooperation in the prevention of circumvention. In reply to the TMB's request for explanation and clarification, the United States stated the following:

> "Article 5.1 of the ATC states that circumvention by transshipment and other means 'frustrates the implementation of this Agreement to integrate the textiles and clothing sector into GATT 1994' and calls on Members to cooperate fully to address this problem. Furthermore, Article 5.2 makes clear that transshipment and other practices can circumvent the ATC. Thus, Article 5 expresses the understanding of the WTO Members that transshipment and other practices that result in circumvention of the quantitative restrictions notified under Article 2 undermine these restrictions and frustrate the integration process set out in Article 2. Accordingly, the United States and China have agreed that the provisions of paragraph 13 [of the administrative arrangements], which address circumvention, are necessary in relation to the implementation of Article 2 of the ATC.
>
> Paragraph 13(E) [related to possible triple charges on quotas] is part of an administrative arrangement that the United States and China agreed was necessary in relation to the implementation of Article 2 of the ATC for the reasons set forth in response to the previous question. We do not believe that each provision of such an arrangement requires separate justification, as Paragraph 13 as a whole is clearly an administrative arrangement within the scope of Article 2.17. The United States will implement this administrative arrangement in conformity with all relevant provisions of the ATC. The United States notified similar provisions in agreed administrative arrangements with the following WTO Members:

Bangladesh; Brazil; Colombia; Costa Rica; Dominican Republic; Egypt; Guatemala; Haiti; Hungary; India; Indonesia; Jamaica; Korea; Macao, China; Malaysia; Mauritius; Oman; Pakistan; Philippines; Poland; Qatar; Romania; Sri Lanka; Chinese Taipei; Thailand; Turkey; Uruguay and United Arab Emirates."

292. In assessing these provisions of the administrative arrangements along with the US' reply above, the TMB recalled that Article 5 of the ATC contains detailed rules and procedures to be followed in order to enhance cooperation between Members in the prevention of circumvention. The TMB noted that the arrangements notified incorporate, almost word-for-word, certain parts of the language of Article 5. At the same time, both in terms of certain substantive elements and procedural aspects, the provisions of the administrative arrangements appear to go beyond what is stipulated in the text of Article 5. While addressing such aspects, the TMB found it necessary to note that the respective provisions of the arrangements did not only refer to Article 5 of the ATC, but that they also clearly spelt out the following: "The Parties recognize that, after China becomes a Member of the WTO and the United States applies the Agreement Establishing the WTO to China, in the event of a conflict between [the circumvention provisions of the administrative arrangements] and Article 5 of the ATC that impairs the operation of the ATC, the ATC shall prevail".

293. Keeping also in mind the above, the TMB made the following observations:

- As reflected in the structure and language of Article 5, the central objective of its provisions is to prevent, to investigate and, if necessary, to take appropriate actions against circumvention practices by establishing the necessary legal and administrative procedures by the Members and relying on the cooperation, consistent with their domestic laws and procedures, between the Members concerned. While the respective provisions of the administrative arrangements provide for necessary consultations between China and the United States, the operational rules seem to focus on the situations where the two parties are unable to reach a mutually satisfactory solution to the matter subject to these consultations.

- According to the arrangements notified, should the parties be unable to reach a satisfactory solution during consultations related to cases referred to under Articles 5.4 and 5.6, the United States may deduct from the respective quantitative limits amounts equivalent to the amount of products transshipped or subject to false declaration or classification, and any such action shall be notified to the TMB with full justification. It was recalled in this regard that Article 5.4 speaks of "appropriate action, to the extent necessary to address the problem" but the adjustment of charges to restraint levels is only one of the possible actions that has been specified by the ATC. Moreover, Article 5.4 lays down strict procedural requirements, including the obligation to notify any action agreed in the bilateral consultations, with full justification to the TMB. Also, if a mutually satisfactory solution is not reached, any Member concerned may refer the matter to the TMB for prompt review and recommendations. As concerns Article 5.6, its language does not specify the possible remedial actions. It simply states that appropriate measures, consistent with domestic laws and regulations, should be taken against the exporters or importers involved and when no or inadequate administrative measures are applied, the Members concerned should consult promptly 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 Member involved.

- It flows also from the above, that Article 5.4 appears to provide some flexibility in terms of remedies or agreed actions that could be foreseen in cases where circumvention has occurred. This is also supported by the sentence in Article 5.4 which states that "[t]he Members concerned may agree on other remedies [i.e. on

> remedies other than those specifically listed in that Article] in consultation". However, Article 5 contains no reference to the possibility for the importing Member to impose triple charges on quotas as a deterrent to circumvention as foreseen in the administrative arrangements. While noting that according to the respective provisions "… any such action shall be notified to the TMB with full justification", it was also recalled that in its reply concerning this particular aspect of the arrangements, the United States had stated that it would "implement this administrative arrangement in conformity with all relevant provisions of the ATC". Furthermore, the language of the arrangements also states, in no ambiguous terms that in the event of a conflict between the respective provision of the administrative arrangement and Article 5, the latter shall prevail. The TMB took note of the US' statement as well as the respective commitment included in the arrangements.

294. In addition, the TMB recalled that when it had examined the administrative arrangements concluded by the United States with several WTO Members, in June 1997, the United States had provided written replies to the TMB's request for clarification. In light of these replies, as regards the correct understanding of the product coverage of these administrative arrangements, the TMB "took note of the precision provided by the United States according to which only products subject to restraints under paragraph 1 of Article 2 were subject to the administrative arrangements". Furthermore, "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 would be implemented by the respective Members in conformity with the relevant provisions of the ATC". Against this background, confirmation was requested if the above statement made by the United States also applied to the administrative arrangements concluded between the United States and China. In response, the United States replied that "[t]he TMB's understanding is confirmed".

295. Therefore, in taking note of the notification received pursuant to Article 2.17, the TMB expected that all the provisions of the administrative arrangements with China would be implemented by the Members concerned in full compliance with the relevant provisions of the ATC.

(6) United States – Chinese Taipei

296. At its meeting of June 2002, the TMB began its review of the notification made by the United States of administrative arrangements agreed between the United States and Chinese Taipei. The TMB decided to seek clarifications from both Members with respect to certain aspects of the notification, including the products covered by the arrangements, the relevance for the implementation of any provision of Article 2 of the ATC and the operation of the provisions regarding cooperation in the prevention of circumvention, the applicability of Article 4 of the ATC in cases where changes in the implementation and interpretation of the administrative arrangements would be implemented, the scope of application of the visa certification system, the ATC relevance of a provision enabling the United States to impose, in particular circumstances, triple charges on quotas, the possibility for the United States to introduce a restraint on such products in certain specific circumstances where a product would be transshipped through Chinese Taipei.

297. The TMB concluded the review, pursuant to Article 2.21, of the notification at its meeting of October 2002. The TMB observed that the introductory paragraph of the notification stated that the "provisions [notified] are drawn from the Agreement Between The Taipei Economic and Cultural Representative Office and The American Institute in Taiwan Concerning Trade in Textile and Apparel Products dated 10 December 1997, and have been agreed by the United States and Chinese Taipei to be necessary in relation to the implementation of restrictions notified to the Textiles Monitoring Body under Article 2.1 of the Agreement on Textiles and Clothing". The TMB recalled that all the administrative arrangements previously notified by the United States had also been characterized by

the approach of keeping in force certain provisions of former bilateral agreements with a view to constituting the provisions of the administrative arrangements in the sense of Article 2.17. In the case of the administrative arrangements with Chinese Taipei, some elements included in the notification had become obsolete, either before Chinese Taipei's accession to the WTO and independent of it, while several other did not reflect the developments that had taken place as a result of Chinese Taipei's membership. In this regard, the United States stated that "[t]he TMB may wish to bear in mind first, that the administrative provisions were drawn from an existing bilateral agreement, rather than being drafted anew and were not prospectively adjusted to account for changes that would occur upon Chinese Taipei's accession to the WTO. Second, at the time the bilateral agreement was concluded, neither Member anticipated the delay to Chinese Taipei's eventual accession to the WTO on 1 January 2002".

298. The TMB noted that the administrative arrangements contained detailed provisions regarding product coverage and related issues of classification and categorization, the structure of the restrictions applied (group limits and specific limits), flexibility adjustments, implementation and administration of the arrangements, visa system, exchange of information, cooperation in the prevention of circumvention and consultation. In addition, annexes to the administrative arrangements included a detailed description of the US textile and apparel category system (together with the conversion factors applied), a list of "exempt products requiring exempt certification", and the full text of the visa arrangement concluded between the two Members. The TMB noted that most of the provisions of the administrative arrangements notified were related to the implementation of restrictions falling under Article 2.1. It was observed, however, that not all the provisions of these arrangements were fully or directly related to the implementation of provisions of Article 2 but that they also dealt with matters that were addressed in some other articles of the ATC. This applied in particular to the provisions related to cooperation in the prevention of circumvention.

299. As regards the product coverage, the administrative arrangements provided a description of the products covered, referring to the annexed listing of the entire US textile and apparel category system. In this regard, the TMB sought confirmation from both Members of its understanding that the products covered by the administrative arrangements were limited to those covered by the ATC and not yet integrated as a result of the implementation of the provisions of Articles 2.6, 2.8(a) and 2.8(b) of the ATC. In response the United States stated that the TMB's understanding was correct, while Chinese Taipei stated that it "confirm[ed] that the scope of textile and apparel products covered in the Administrative Arrangement are in conformity with the coverage of the products in the Annex of the ATC, and that they are products which have not been integrated into GATT 1994 as stipulated in Article 2.6, 2.8(a) and 2.8(b) of the ATC. The products listed in the notification [made pursuant to Article 2.1], which have already been integrated into GATT 1994 under the provisions of Article 2.6, 2.8(a) and 2.8(b) of the ATC, are not covered by the Administrative Arrangement". On that basis, it could be established that, in conformity with Article 2.17, the products covered by the arrangements were limited to those ATC products that had not yet been integrated and were subject to import restrictions notified by the United States under Article 2.1.

300. The administrative arrangements keep in force the previously agreed visa system between the two parties and the full text of the visa arrangement was notified as an attachment. This system requires Chinese Taipei to issue a visa for each shipment of textiles or textile articles and this visa has to be presented to the US Customs Service before entry, or withdrawal from warehouse for consumption, into the customs territory of the United States. The visa arrangement specifies all the related requirements and procedures. Since, in the sense of Article 2.17, administrative arrangements are related to the implementation of provisions of Article 2, the TMB sought confirmation from the United States of its understanding that no visa requirements would be applied to the imports from Chinese Taipei of any of the products integrated into GATT 1994 by the United States as a result of the Stages 1 to 3 integration programmes. In its reply the United States confirmed the TMB's understanding of this matter.

301. The TMB observed that the administrative arrangements contained provisions regarding possible changes in the implementation and administration, addressing issues such as those mentioned in Article 4 of the ATC. It sought confirmation of its understanding that in cases where changes such as those mentioned in those provisions of the administrative arrangements would take place, the provisions of Article 4 of the ATC would prevail. The United States replied that the "TMB's assumption that paragraph 11 (a) [related to 'changes in the implementation and interpretation' of the administrative arrangements] has been superseded by ATC Article 4 is correct", and Chinese Taipei stated that "[p]aragraph 11(a) is complementary information to the implementation of Article 2 of the ATC. Chinese Taipei confirms that in a case where changes such as mentioned in paragraph 11(a) occur and affect the implementation and management of the ATC, any action taken will be in accordance with the provisions of Article 4 of the ATC".

302. In light of the TMB's overview as reflected, in particular, in paragraphs 299 to 301 above, it could be ascertained that the provisions of the administrative arrangements related to product coverage, flexibility provisions and the application of the visa system enabled the exporting Member to administer the restrictions referred to in Article 2. The TMB noted that this was in line with the requirements of Article 4.1.

303. The administrative arrangements also contained very detailed provisions on the issue of cooperation in the prevention of circumvention. The TMB requested the United States to provide an explanation as to how, in its view, such provisions were deemed necessary in relation to the implementation of any provision of Article 2. Furthermore, the arrangements contained a provision (paragraph 18 (E)) enabling the importing Member to impose, in particular circumstances, triple charges on quotas, though Article 5 of the ATC does not mention such a possibility. The TMB also requested explanations in this regard. In its reply, the United States stated the following: "Article 5.1 of the ATC states that circumvention by transshipment and other means 'frustrates the implementation of this Agreement to integrate the textiles and clothing sector into GATT 1994' and calls on Members to cooperate fully to address this problem. Furthermore, Article 5.2 makes clear that transshipment and other practices can circumvent the ATC. Thus, Article 5 expresses the understanding of the WTO Members that transshipment and other practices that result in circumvention of the quantitative restrictions notified under Article 2 undermine these restrictions and frustrate the integration process set out in Article 2. Accordingly, the United States and Chinese Taipei have agreed that the provisions of paragraph 18 [of the administrative arrangements], which address circumvention, are necessary in relation to the implementation of Article 2 of the ATC. Paragraph 18(E) is part of an administrative arrangement that the United States and Chinese Taipei agreed was necessary in relation to the implementation of Article 2 of the ATC for the reasons set forth [above]. We do not believe that each provision of such an arrangement requires separate justification, as Paragraph 18 as a whole is clearly an administrative arrangement within the scope of Article 2.17. The United States will implement this administrative arrangement in conformity with all relevant provisions of the ATC. The United States notified similar provisions in agreed administrative arrangements with the following WTO Members: Bangladesh; Brazil; China; Colombia; Costa Rica; Dominican Republic; Egypt; Guatemala; Haiti; Hungary; India; Indonesia; Jamaica; Korea; Macao, China; Malaysia; Mauritius; Oman; Pakistan; Philippines; Poland; Qatar; Romania; Sri Lanka; Thailand; Turkey; Uruguay and United Arab Emirates". For its part, Chinese Taipei stated that the provision on cooperation in the prevention of circumvention was a supplement to the former bilateral textile agreement between the two parties. It "[was] following the precedents of agreements contracted between the U.S. and other countries, which Chinese Taipei and the United States consulted upon the renewal of Bilateral Textile Agreement in 1995. For transparency reasons and considering that the similar provisions also exist in the administrative arrangements concluded between the U.S. and other WTO members, Chinese Taipei agrees to include this paragraph in the Administrative Arrangement".

304. In assessing these provisions of the administrative arrangements, also in light of the replies reflected above, the TMB recalled that Article 5 of the ATC contains detailed rules and procedures to be followed with a view to enhancing cooperation between Members in the prevention of

circumvention. The TMB noted that the arrangements notified incorporated a few elements of the language of Article 5. At the same time, in terms of both some substantive elements and some procedural aspects, the provisions of the administrative arrangements appeared to go beyond what is stipulated in the text of Article 5. In this regard, the TMB made the following observations:

- As reflected in the structure and language of Article 5, the central objective of its provisions is to prevent, to investigate and, if necessary, to take appropriate actions against circumvention practices by establishing the necessary legal and administrative procedures by the Members and relying on the cooperation, consistent with their domestic laws and procedures, between, the Members concerned. While the specific provisions of the administrative arrangements provide for the necessary consultations between Chinese Taipei and the United States, the operational rules seemed to focus on those situations when the two parties are unable to reach a mutually satisfactory solution to the matter subject to those consultations.

- According to the arrangements notified, should the parties be unable to reach a satisfactory solution during consultations regarding cases referred to under Articles 5.4 and 5.6, the United States may deduct from the respective quantitative limit amounts at least equivalent to the amount of products transshipped or subject to false declaration or classification, and any such action shall be notified to the TMB. It was recalled in this regard that Article 5.4 speaks of "appropriate action, to the extent necessary to address the problem", the adjustments of charges to restraint levels being only one of the possible actions that has been specified by the ATC. Moreover, Article 5.4 lays down strict procedural requirements, including the obligation to notify any action agreed in the bilateral consultations, with full justification to the TMB. Also, if a mutually satisfactory solution is not reached, any Member concerned may refer the matter to the TMB for prompt review and recommendation. As concerns Article 5.6, its language does not specify the possible remedial actions. It simply states that appropriate measures, consistent with domestic laws and regulations, should be taken against the exporters or importers involved and, in cases when no or inadequate administrative measures are being applied, the Members concerned should consult promptly with a view to seeking a mutually satisfactory solution. If such a solution is not reached, the matter may be referred by any Member involved to the TMB for recommendations.

- It flows also from the above that Article 5.4 appears to provide some flexibility in terms of remedies or agreed actions that could be foreseen in cases when circumvention has occurred. This is also supported by the sentence included in Article 5.4 stating that "[t]he Members concerned may agree on other remedies [i.e. other remedies than those specifically listed in that Article] in consultation." However, Article 5 contains no reference to the possibility for the importing Member to impose triple charges on quotas, as a deterrent to circumvention foreseen in the administrative arrangements. While noting that according to the respective provision "[a]ny action taken under this paragraph shall be notified to the Textiles Monitoring Body", it was also recalled that in its reply related to this particular aspect of the arrangements notified, the United States had stated that it would "implement this administrative arrangement in conformity with all relevant provisions of the ATC". The TMB took note of the US' statement.

305. In addition, the TMB recalled that when it had examined the administrative arrangements concluded by the United States with several WTO Members, in June 1997, the United States had provided written replies to the TMB's request for clarification. In light of these replies, as regards the correct understanding of the product coverage of these administrative arrangements, the TMB "took note of the precision provided by the United States according to which only products subject to

restraints under paragraph 1 of Article 2 were subject to the administrative arrangements". Furthermore, "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 would be implemented by the respective Members in conformity with the relevant provisions of the ATC". Against this background, the TMB requested confirmation that the above statement made by the United States also applied to the administrative arrangements with Chinese Taipei. In its reply the United States stated that "[t]he TMB's understanding is confirmed".

306. Therefore, in taking note of the notification received pursuant to Article 2.17, the TMB expected that all the provisions of the administrative arrangements between the United States and Chinese Taipei would be implemented by the two Members concerned in full compliance with the relevant provisions of the ATC.

(ii) Implementation of the administrative arrangements during Stage 3 of the integration process

307. As indicated earlier[140], since administrative arrangements agreed in the sense of Article 2.17 were deemed necessary in relation to the implementation of any provision of Article 2, all the arrangements notified have remained operational during Stage 3 of the integration process. No specific issue whatsoever related to the implementation of such arrangements has been brought to the attention of the TMB.

308. As regards the European Communities, however, the TMB noted that the latter had confirmed, in a response to questions put by the Body regarding the consequences of the enlargement of the European Union[141], that since, as from 1 May 2004, the European Union includes ten new member States, and that, consequently, the new member States must apply the common trade policy concerning textiles and the already existing quantitative restrictions applied by the Community on imports of textile and clothing products were adjusted to take account of the accession of these new member States. In this light, it can also be assumed that with the enlargement of the European Communities on 1 May 2004, the scope of application of the administrative arrangements notified by the EC has also been extended to the new member States. It should be noted, however, that the TMB has received no specific communication or information from the European Communities in this regard.

(f) Implementation of the provisions of Article 2.18 in relation to small suppliers as well as, to the extent possible, to least-developed country Members

309. 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 for their exports shall be provided at the entry into force of the WTO Agreement and for the duration of the ATC 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. This provision should be read in conjunction with the language of Article 1.2 which states the following:

> "Members agree to use the provisions of paragraph 18 of Article 2 […] in such a way as to permit meaningful increases in access possibilities for small suppliers and the development of commercially significant trading opportunities for new entrants in the fields of textile and clothing trade."

[140] See paragraph 263 above.
[141] See in particular paragraph 325 below.

A footnote to Article 1.2 specifies that "[t]o the extent possible, exports from a least-developed country Member may also benefit from this provision".

310. It can be observed that while the provisions of Articles 1.2 and 2.18 are closely linked to each other, the definition of the small suppliers and new entrants as the potential beneficiaries is provided in Article 2.18, namely in relation to their respective share in the total volume of the restrictions applied by the restraining Members concerned as of 31 December 1991.

(i) Implementation during Stages 1 and 2 of the integration process

311. Since as far as the implementation of these provisions is concerned, the methodology adopted during Stage 1 by the Members maintaining restrictions under Article 2 had an impact on the market access opportunities provided with reference to Article 2.18 also for Stages 2 and 3, it is appropriate to offer a brief reminder in this regard.

312. As reported by Canada in 1995, 16 Members were qualified for improved access under this provision: Costa Rica; Cuba; Czech Republic; Dominican Republic; Hungary; Jamaica; Lesotho; Macao, China; Mauritius; Myanmar; Poland; Slovak Republic; South Africa; Sri Lanka; Swaziland and Uruguay. In addition, Canada applied this provision to the restraints applied on imports from Bulgaria when Bulgaria joined the WTO, as it met the criteria of Article 2.18. This improvement in access was effected by the increase in 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, the two groups of Members representing altogether over 9 per cent of the volume of Canada's total restraints.[142]

313. The United States listed 22 Members qualified under this Article for improved access: Bahrain; Colombia; Costa Rica; Czech Republic; Dominican Republic; Egypt; El Salvador; Fiji; Guatemala; Haiti; Hungary; Jamaica; Kenya; Kuwait; Macao, China; Mauritius; Poland; Qatar; Romania; Slovak Republic; 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.[143]

314. 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 the increase in 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.[144]

315. In reviewing the notifications above, the TMB observed, *inter alia*, that the implementation of this provision of the ATC had been made by the Members concerned using different methodologies and that no Member had 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

[142] See G/L/459, paragraph 285.
[143] *Idem*, paragraph 286.
[144] *Idem*, paragraph 287.

methodology chosen for the advancement by one stage of the growth rates had included the growth factor of the first stage, as done by one Member.[145]

316. For the purpose of implementation of the provisions of Article 2.18 during Stage 2, the growth rate of the restrictions in effect on 31 December 1997 had been increased by 27 per cent by Canada, the European Communities and the United States, respectively. The beneficiaries remained the same as in Stage 1, with the exception that the United States extended this treatment also to Bulgaria after the latter became a Member of the WTO.[146]

317. In its second comprehensive report the TMB observed in this regard that the methodology chosen by the respective Members for the implementation of the provisions of Article 2.18 during Stage 1 predetermined the possible impact of the implementation of the same provisions during Stage 2. Though, unlike during the first stage, the methodology used for the second stage by the three Members concerned was the same (i.e. the growth rate normally applicable for Stage 3 (27 per cent) was applied instead of the 25 per cent defined in Articles 2.14(a)), the effect was different in the case of the European Community, on the one hand, and Canada and the United States, on the other. The cumulative approach adopted by the European Communities during Stage 1, whereby the advancement by one stage of the growth rate included the growth factors of both the first and second stages, also resulted in higher growth for Stage 2, when compared to the advancement, referred to in Article 2.18, as implemented by Canada and the United States. It is also noteworthy that, following the pattern that characterized the implementation during the first stage, no Member used the possibility of agreeing on equivalent changes with respect to a different mix of base levels, growth and flexibility provisions during the second stage either.[147]

(ii) Implementation during Stage 3

318. As reported in Part Two of the present report[148], in November 2001 the TMB noted on the basis of the respective communications received that Canada, the European Communities and the United States would increase the annual growth rates applied during Stage 2 for WTO Members falling under the provisions of Article 2.18 in their respective regimes by 27 per cent as from 1 January 2002. Subsequently, the only related development that was brought to the TMB's attention concerned Canada's implementation, as from 1 January 2003, of improvements to its preferential scheme for least developed countries[149], providing *inter alia* for quota-free access for all products covered by the ATC. As also noted already by the TMB, two WTO Members, namely, Bangladesh and Lesotho could benefit under this measure from the elimination of restrictions maintained under Article 2.1

319. Furthermore, in view of the fact that the European Communities has continued to suspend the application, during Stage 3, of the restrictions notified on imports from Sri Lanka[150], in practice one Member (Peru) would be affected by the EC's implementation of the provisions of Article 2.18.

(iii) The respective decision of the Doha Ministerial Conference and its follow-up

320. The Decision by Ministers on Implementation-Related Issues and Concerns adopted on 14 November 2001, requested the Council for Trade in Goods to examine, *inter alia*, the proposal "[...] that when calculating the quota levels for small suppliers for the remaining years of the Agreement, Members will apply the most favourable methodology available in respect of those

[145] G/L/459, paragraph 288.
[146] *Idem*, paragraph 289.
[147] See G/L/459, paragraph 337.
[148] See paragraph 21 above.
[149] See paragraphs 182 and 183 above.
[150] See paragraph 195 above.

Members under the growth-on-growth provisions from the beginning of the implementation period; extend the same treatment to least-developed countries; and, where possible, eliminate quota restrictions on imports of such Members."[151] The decision requested the CTG to make recommendations (also with respect to this matter) to the General Council by 31 July 2002 for appropriate action.[152]

321. Although the follow-up given to this decision is summarized in another Section of this report[153], it should be mentioned that the Council for Trade in Goods was not in a position to make recommendations to the General Council with respect to this subject-matter. Therefore, the provisions of Article 2.18 were implemented during Stage 3 in the manner summarized in paragraphs 318 and 319 above.

3. Introduction of new restrictions during the implementation of Stage 3 of the integration process. Compliance with the provisions of Article 2.4

322. Article 2.4 states that "[t]he restrictions notified under paragraph 1 [of Article 2] shall be deemed to constitute the totality of such restrictions applied by the respective Members on the day before the entry into force of the WTO Agreement. No new restrictions in terms of products or Members shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions [footnote omitted] …".

323. The second comprehensive report of the TMB provided an overview of those cases regarding which, during the implementation of Stage 2 of the integration process, either the inconsistency of the measures in question, *inter alia*, with the provisions of Article 2.4 had been established by the Dispute Settlement Body or the breach of these provisions was claimed by certain Members concerned.[154] It is of particular relevance in the context of ATC implementation during Stage 3 that while the DSB found that the imposition of quantitative restrictions by Turkey on imports of certain textile and clothing products from India had been inconsistent, *inter alia*, with the provisions of Article 2.4[155], Turkey has continued to apply such restrictions on imports from several Members (including India[156]) during Stage 3 of the integration process.

324. During the implementation of Stage 3 of the integration process, one specific issue was raised in the TMB that could also be relevant, in the context of compliance, *inter alia*, with the provisions of Article 2.4. Following the enlargement of the European Communities on 1 May 2004, while none of the ten new member States had previously notified restrictions maintained under Article 2, the European Communities extended the application of its restrictions falling under Article 2.1 (and, if applicable, also Article 3.1) to include imports by the new member States as well.

325. A communication regarding this issue made by a number of TMB members pursuant to paragraph 3 of the TMB's working procedures[157], and requesting the TMB to review, pursuant to Article 2.21, the "[i]ntroduction by the European Union of quota restrictions in the markets of ten newly acceding States, Members of the WTO", was examined by the TMB at its meetings in May and June 2004. In order for the TMB to discharge its functions pursuant to Article 2.21 and also with a

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[151] See WT/MIN(01)/17.
[152] Ibid.
[153] See paragraphs 586, 587 and 595 below.
[154] See G/L/459, paragraphs 312 to 318 and their respective footnotes.
[155] *Idem*, paragraph 377.
[156] Presumably this was in line with the terms of the mutually satisfactory solution reached between the two Members regarding the implementation by Turkey of the conclusions and recommendations adopted by the DSB.
[157] Paragraph 3 of the working procedures provide, *inter alia*, that "[i]t shall be open to any WTO Member and to any member of the TMB to suggest items for inclusion in the proposed agenda up to, and not including, the day on which the convening notice is to be issued."

view to providing a useful contribution in the context of the preparation of the present comprehensive report, the TMB requested the European Communities to provide any related notification and, as appropriate, information in respect of the restrictions introduced by the European Communities on 1 May 2004. In its response, the European Communities stated the following: "Referring to your letter [...] concerning the deliberations of the TMB during its meeting on 17-18 May about EU enlargement as of 1 May, I would like to inform you of the following:

- As from 1 May 2004, the European Union includes ten new member States. The Act of Accession establishes in Article 6(7) that the new member States must apply the common trade policy concerning textiles and that the already existing quantitative restrictions applied by the Community on imports of textile and clothing products are to be adjusted to take account of the accession of the new member States to the Community. These quantitative restrictions, already notified to the TMB, applicable to imports of certain textile products from third countries into the enlarged Community have consequently been adjusted so as to cover equally imports into the ten new member States, and the Council Regulation (EEC) No. 3030/93 on common rules for imports of certain textile products from third countries has been amended accordingly. The new Council Regulation amending Council Regulation (EC) No. 3030/93 has been published under Council Regulation No. 487/04 in the Official Journal of the European Union, No. L79 on 17 March 2004. […]

- It is pointed out that the Community does not consider this extension of the geographical application of existing restrictions to constitute new restrictions in the sense of Article 2.4 of the ATC. This extension was necessary to realize the enlargement process whilst ensuring the maintenance and unhampered functioning of the expanded internal EU market in the interest of all economic operators, including exporters. The option of maintaining the import regime into the new member States unchanged but without allowing free circulation within the Community was not considered to be in the general interest of neither exporters, Community operators nor consumers. On overall terms, the general incidence of enlargement has to be considered in the longer term and can as such not be considered more restrictive than the situation prior to 1 May. The Community's notification to the TMB of 17 March about elimination of restrictions on schedule as foreseen by the ATC by the end of 2004 remains valid also for the enlarged Community of 25 members.

- When adjusting and increasing the quantities from EU 15 to EU 25 the European Communities have used a methodology which takes into account the traditional imports into the new member States, using a formula consisting of the average of the last three years' imports into the ten new member States originating in third countries, adjusted pro rata temporis."

326. In beginning its consideration of this matter, the TMB noted that the issue in question had already been raised in other WTO bodies and, to the best of TMB's knowledge, no substantive information had been provided there by the European Communities. It was noted, furthermore, that the response of the European Communities does not refer to any other relevant notification or communication addressed to other WTO bodies on the same subject-matter and also that the TMB was unaware of any such possible notification or communication. It was noted that the review was to be conducted not "at the request of any [WTO] Member" and that, therefore, "inviting the participation of such Members" was not warranted. Thus the review had to be essentially governed by the provisions of the first sentence of Article 2.21. In the view of the TMB, the communication from the European Communities did not constitute, in a formal sense, a notification made with specific reference to an applicable provision of the ATC. It could be observed, however, that the communication spoke of "the extension of the geographical application of existing restrictions" that

"[had been] already notified to the TMB" and that the ATC was the only multilateral trade agreement included in Annex 1A of the WTO Agreement that was specifically mentioned in the EC's communication. It could be established, therefore, that the European Communities considered that the restrictions in question were falling under the provisions of the ATC under which they had been previously notified by the EC and that the European Communities did not invoke any other provision of the WTO Agreement, including GATT 1994, as a possible justification for the restrictions.

327. Recalling the mandate entrusted to it in Article 2.21 and also that, pursuant to Article 8.1, the Body has to examine all measures taken under the ATC and their conformity therewith, the TMB proceeded to the examination one by one of the main arguments and explanations provided by the European Communities. The TMB first observed that the European Communities considered, *inter alia*, that the action taken by it on 1 May 2004 did not constitute the introduction of new restrictions in the sense of Article 2.4 of the ATC, but that this was merely an extension of the geographical application of existing restrictions. These existing restrictions had already been notified to the TMB and had been adjusted as from 1 May 2004 to take into account equally imports of the ten new member States. The TMB observed in this regard that the European Communities had notified to the TMB "existing restrictions" pursuant to the provisions of Article 2.1. The TMB noted that, in essence, the European Communities used the argument that at the level of the EC the totality of the restrictions applied had affected the same WTO Members and the same products as notified earlier. On this basis the European Communities held the view that the "extension of the geographical application of existing restrictions" could not be considered to constitute new restrictions in the sense of Article 2.4. It was noted that, on the one hand, the language of the ATC does not contain an explicit prohibition of implementing changes in the geographical application of the restrictions previously notified and that the EC might have assumed that this lack of explicit prohibition could be claimed as a legal justification for the measures in question. It was also noted that, on the other hand, the lack of such an explicit prohibition does not necessarily confer the right of implementing any action that is not specifically prohibited. The ATC (like most of the multilateral trade agreements) lays down the basic rules and disciplines to be applied, but does not address particular situations, such as the impact of the enlargement of the European Communities. The TMB noted in this regard that the restrictions in question as notified previously had been applied by the European Communities composed of 15 member States, while the ten new member States had not previously maintained any restrictions under Article 2.1. Seen in this light, there was no doubt that access to the markets of the ten new member States has become subject to restrictions as from 1 May 2004, resulting from the application of the restrictions notified by the European Communities in 1995 which had encompassed, at this point in time, 15 and not 25 member States. Therefore, for the ten new member States, also Members of the WTO prior to the enlargement of the European Communities and having already undertaken well defined obligations *vis-à-vis* other WTO Members, *inter alia*, under the ATC, the measure taken by the EC amounted to the introduction of "new restrictions in terms of products or Members ", as referred to in Article 2.4.

328. Keeping also in mind the above, the TMB returned to the argument of the EC that, at the level of the European Communities, the action taken could not be considered to constitute new restrictions in the sense of Article 2.4. The TMB recalled that Article 2.4 states, *inter alia*, that "[t]he restrictions notified under paragraph 1 [of Article 2] shall be deemed to constitute the totality of such restrictions applied by the respective Members on the day before the entry into force of the WTO Agreement. No new restrictions in terms of products or Members shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions." As regards the implementation of this provision, the TMB observed that, in its report, the Panel on *Turkey – Restrictions on Imports of Textile and Clothing Products* had, *inter alia*, examined the question of how to interpret the prohibition of new restrictions as contained in Article 2.4. The Panel had stated in this regard that: "[t]he prohibition on 'new restrictions' must be interpreted taking into account the preceding sentence: 'The restrictions notified under paragraph 1 shall be deemed to constitute the totality of such restrictions applied by the respective Members on the day before the entry into force of the WTO Agreement'. The ordinary meaning of the words indicates that WTO Members intended that as of 1 January 1995, the incidence

of restrictions under the ATC could only be reduced. We are of the view that any legal fiction whereby an existing restriction could simply be increased and not constitute a 'new restriction', would defeat the clear purpose of the ATC which is to reduce the scope of such restrictions, starting from 1 January 1995 (but for the exceptional situations referred to in Article 2.4 of the ATC). Thus, we consider that, setting aside the possibility of exceptions and justifications mentioned in Article 2.4 of the ATC, any increase of an ATC compatible quantitative restriction notified under Article 2.1 of the ATC, constitutes a 'new' restriction." [158] The TMB was aware that the consideration of the Panel mentioned above could not be applied, *mutatis mutandis*, in the present case. It noted, however, that the Panel's consideration was made in response to Turkey's claim, according to which the restrictions applied by it were not new, since the European Communities had similar restrictions in place when Turkey and the European Communities formed their customs union. Therefore, without prejudice to other possible legal considerations regarding similarities or differences between the case examined by the Panel and the one reviewed the TMB, this aspect of the Panel's consideration appeared to be relevant to the present review in the sense that the Panel provided a helpful contribution to a better and fuller understanding of Member's rights and obligations arising from the provisions of Article 2.4.

329. In light of the above, and recalling that, according to Article 2.4 "[n]o new restrictions in terms of products or Members shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions [footnote omitted]" the TMB, while noting that, in the view of the EC, the European Communities had acted in conformity with its respective obligations under the ATC, was of the view that the extension of the geographical application of the existing restrictions constituted new restrictions in the sense of Article 2.4. Accordingly, these new restrictions could not find a justification under the ATC.

330. The TMB observed, furthermore, that the European Communities had also notified to the TMB in the past restrictions pursuant to Article 3.1 of the ATC, and provided for the progressive phase out of such restrictions. According to the information provided by the European Communities in response to the TMB, the geographical coverage of these restrictions had also been extended to include the ten new member States. The Body observed in this regard that Article 3 does not provide for the possibility of introducing new restrictions or changes in existing restrictions on the products covered by the ATC, except under relevant GATT 1994 provisions. According to Article 3.3, notifications submitted to any other WTO bodies with respect to such actions had to be provided to the TMB, for its information, within 60 days of their coming into effect. No such notification had been received by the TMB from the European Communities. The Body was of the view, therefore, that these restrictions as extended to cover the ten new member States of the European Communities could not find justification under the ATC.

331. The TMB also recalled that, as indicated in the response received from the European Communities, according to the Act of Accession "the ten new member States must apply the [EC's] common trade policy concerning textiles". This implied that the new member States had to take over the trade regime of the European Communities in this area. Such a takeover could raise, in the view of the TMB, further related issues in the context of the implementation of the ATC, such as those related to the implementation of integration programmes under the Agreement.

332. The European Communities also stated that "[t]his extension was necessary to realize the enlargement process whilst ensuring the maintenance and unhampered functioning of the expanded internal EU market in the interest of all economic operators, including exporters. The option of maintaining the import regime into the new member States unchanged but without allowing free circulation within the Community was not considered to be in the general interest of neither exporters, Community operators nor consumers." The TMB noted that the European Communities itself recognized that it could have had recourse to options other than "the extension of the geographical application of existing restrictions." It was pointed out in this regard that practically the same

[158] See WT/DS34/R, paragraph 9.71.

objective could have been fulfilled through alternatives to the imposition of quantitative restrictions. The TMB also observed that the enlargement process had taken place only eight months before the full elimination of all existing quota restrictions resulting from the full integration of the textiles and clothing sector into GATT 1994, and that the European Communities had confirmed in the communication that the notification to the TMB of 17 March 2004 about elimination of restrictions on schedule as foreseen by the ATC by the end of 2004 remained valid also for the enlarged Community of 25 members. The TMB noted, furthermore, that the European Communities stated that "[w]hen adjusting and increasing the quantities from EU 15 to EU 25 the European Communities [had] used a methodology which takes into account the traditional imports into the new member States, using a formula consisting of the average of the last three years' imports into the ten new member States originating in third countries, adjusted pro rata temporis." Without prejudice to the conclusions reached as reflected in paragraphs 329 and 330 above, the TMB observed in this regard that it appeared that in so doing the European Communities had not taken into account the growth provisions embodied in the ATC to calculate the amount by which the level of the respective quantitative restrictions had already been increased by the EC.

333. Another argument put forward by the European Communities was that, on overall terms, the general incidence of enlargement had to be considered in the longer term and could, as such, not be considered more restrictive than the situation prior to 1 May 2004. The TMB recalled in this regard that, according to Article 8.1, its mandate was to supervise the implementation of this Agreement, to examine all measures taken under this Agreement and their conformity therewith, and to take the actions specifically required of it by this Agreement. The TMB could not, therefore, take into consideration the possible – and allegedly positive – incidence of measures taken under the ATC outside the ATC framework and beyond the duration of the ATC. In this respect the TMB observed that under the ATC the extension of the geographical application of existing restrictions to Members which until then had not applied such restrictions contributed to creating a situation more restrictive after 1 May 2004 than before.

334. In view of all the reasons outlined in paragraphs 326 to 333 above, the TMB found that the action by the European Communities could not find justification under the provisions of the ATC.

4. Other provisions of Article 2

(a) Observations brought to the attention of the TMB, pursuant to Article 2.2

335. According to Article 2.2, "… [i]t is open to any Member to bring to the attention of the TMB, within 60 days of the circulation of the notifications [made pursuant to Article 2.1], any observations it deems appropriate with regard to such notifications. Such notifications shall be circulated to the other Members for their information. The TMB may make recommendations, as appropriate, to the Members concerned." As also reflected in the 60-day deadline specified, this provision was particularly relevant at the beginning of the implementation period of the ATC, when most of the notifications, pursuant to Article 2.1, were made. Nevertheless, with the accession of new Members, the TMB has received a number of observations, pursuant to Article 2.2, also during the period of implementation of Stage 3 of the integration process. All these observations are referred to in this section of the report in the context of the review by the TMB of the relevant notifications received with reference to Article 2.1 and they had been fully taken into account by the Body in its review of the respective notifications under Article 2.21. Also, in one specific case, the TMB made a formal recommendation with reference, *inter alia*, to Article 2.2.[159]

[159] See paragraph 220 above.

(b) Arrangements to bring restrictions into line with agreement year (Article 2.3) and treatment of MFA Article 3 measures (Article 2.5)

336. Articles 2.3 and 2.5 were designed to provide a "bridge" between the former MFA regime 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 set a notional level for the 12-month period ending 31 December 1994. While no notifications were made under this provision during the first stage of the integration process, the TMB understood that, in certain cases, some adjustments had been made and incorporated into the notifications of restraint levels under Article 2.1. These latter notifications were made during the early part of the ATC implementation. No notification was made with reference to Article 2.3 during the implementation of Stage 3.

337. Article 2.5 was intended to provide for the treatment of 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 (TSB) up to 31 December 1994 or by 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 during the first stage of the implementation. The same applies to Stage 2 and Stage 3, all the more since Article 2.5 is a transitory provision that could be invoked only during a relatively limited period of time, after which the provision itself became *de facto* inapplicable.

(c) Safeguard measures initiated under Article XIX of GATT 1994 in terms of Articles 2.19 and 2.20 of the ATC

338. Articles 2.19 and 2.20 refer to safeguard measures applied under Article XIX of GATT 1994 during the duration of ATC implementation but during a period of one year immediately following integration of the products concerned pursuant to Article 2 of the ATC. Article 2.20 sets out provisions which can be applied if the GATT Article XIX safeguard measure is applied using non-tariff means. To the knowledge of the TMB, no safeguard measures have been taken during Stage 3 that would have fallen under the provisions of Articles 2.19 and 2.20.

5. Review of the implementation of Article 2 by the TMB pursuant to Article 2.21

339. Article 2.21 requires the TMB to keep the implementation of Article 2 under review. During the third stage of the integration process, the TMB reviewed notifications made by Members pursuant to Articles 2.1, 2.2, 2.6 and 2.7(b), 2.8(a) and 2.11, 2.8(b) and 2.11, 2.8(c) and 2.11, 2.15 and 2.17. All these reviews are reported in detail in this section of the report. It is also in compliance, *inter alia*, with this requirement that the TMB has sought several clarifications from Members concerned with respect to different aspects of their respective notifications and, in case of need, urged Members to provide their replies to the questions posed. Similarly, the same requirement has been germane to the TMB's reminder to Members regarding the notification requirements concerning the final stage integration programmes.

340. The TMB received a communication from a number of its members, pursuant to paragraph 3 of the TMB's working procedures, requesting the TMB to review, pursuant to Article 2.21, the "[i]ntroduction by the European Union of quota restrictions in the markets of ten newly acceding States, Members of the WTO." The TMB reviewed this matter at its meetings of May and June 2004.[160]

[160] The examination by the TMB of this communication is reported in detail in paragraphs 325 to 334 above.

341. Further, according to Article 2.21, the TMB "shall, at the request of any Member, review any particular matter with reference to the implementation of the provisions of [Article 2]". In such cases, the TMB "shall make appropriate recommendations or findings within 30 days to the Member or Members concerned, after inviting the participation of such Members". During Stage 3, the TMB has not received any such request from any WTO Member with reference to Article 2.21.

6. Views, comments and assessments of WTO Members in response to the TMB's general request for information

(a) ITCB members

342. In their response to the TMB's request for information and comments in the context of the preparation of the present report, in their communication ITCB members raised a number of issues that are (also) relevant in relation to the implementation of the provisions of Article 2. These issues were related to the following:

- the pace of the phasing out of the quantitative restrictions, as a key consideration in assessing the overall implementation of the integration process under the ATC;
- elimination of restrictions on non-WTO members while maintaining them on imports of the same products from WTO Members;
- treatment granted to special categories of suppliers such as, *inter alia*, small suppliers and least-developed country Members;
- administrative arrangements notified under Article 2.17;
- extension of the restrictions of the European Communities to new member States' markets;
- carry forward quotas in 2004.

343. The first three issues listed above, together with the details of the respective points raised by ITCB members, are addressed in other sections of this report.[161]

344. With respect to the administrative arrangements, ITCB members stated as follows:

> "The three major restraining countries have recently notified their final integration programmes to the TMB. In these notifications, it has been indicated that with the integration of remaining ATC products they will also eliminate all remaining quota restrictions. It is noted, however, that these notifications are silent with respect to the administrative arrangements and procedures that have been in place for the implementation and administration of quota restrictions.
>
> That notwithstanding, we note that, when reviewing these notifications, the TMB provided the following clarification:
>
> ' … [The TMB] also recalled that the quantitative restrictions maintained under Article 2 of the ATC were being implemented through additional procedures, such as the administrative arrangements agreed between Members and notified under Article 2.17. The TMB recalled that these administrative arrangements could only be deemed necessary in relation to the implementation of restrictions applied under the

[161] See in particular paragraphs 630 to 631, 580 and 517 below, respectively.

> ATC. Therefore, with the elimination of all quantitative restrictions under the ATC, all related administrative procedures and measures, including those specified in the administrative arrangements notified pursuant to Article 2.17, shall also stand terminated.' (G/TMB/R/106, paragraph 13, and G/TMB/R/107, paragraph 7).
>
> It is suggested that, in its report to the Council for Trade in Goods, the TMB may reiterate its findings with respect to the issue of administrative arrangements."

345. Regarding the application of the EC's quota restrictions to new member States' markets, in their contribution ITCB members made the following comments:

> "The EU is being enlarged with the accession of ten new member States from May 2004 (namely, the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia). In accordance with Council Regulation (EC) No 487/2004 of 11 March 2004, the EC has announced the extension of its quotas on textiles and clothing to include these newly acceding States, and determined the levels of these quota limits unilaterally.
>
> We note that these are new restrictions as they were not notified either by the EC or any of the acceding States pursuant to Article 2.1 of the ATC.
>
> It is felt that the imposition of these new quotas is not compatible with Article 2.4 of the ATC according to which 'no new restrictions in terms of products or Members shall be introduced except under the provisions of [the ATC] or relevant GATT 1994 provisions'.
>
> In this connection, the TMB may wish to recall that similar restrictions imposed by Turkey following its customs union with the EC were found violative of Article 2.4 of the ATC by a dispute panel and the Appellate Body, and it was ruled that neither were they justified by reference to GATT Article XXIV. The following finding by the Panel is especially noteworthy:
>
> > 'The prohibition on "new restrictions" must be interpreted taking into account the preceding sentence [in Article 2.4 of the ATC]: "The restrictions notified under paragraph 1 shall be deemed to constitute the *totality of such restrictions* applied by the respective Members on the day before the entry into force of the WTO Agreement". The ordinary meaning of the words indicates that WTO Members intended that as of 1 January 1995, the incidence of restrictions under the ATC could only be reduced. We are of the view that any legal fiction whereby an existing restriction could simply be increased and not constitute a "new restriction", would defeat the clear purpose of the ATC which is to reduce the scope of such restrictions, starting from 1 January 1995 ... . Thus, we consider that, setting aside the possibility of exceptions and justifications mentioned in Article 2.4 of the ATC, any increase of an ATC compatible quantitative restriction notified under Article 2.1 of the ATC, constitutes a "new" restriction.
> >
> > On 28 February 1995 (therefore within the 60-day period of Article 2.1 of the ATC), the European Communities notified its previous restrictions maintained under the MFA. This notification referred to restrictions applicable only to EC territory. After the period of 60 days (under Article 2 of the ATC) the European Communities is prohibited from notifying any new restrictions or changes to existing and notified restrictions, except if adopted in compliance with the ATC or any other provisions of GATT 1994. Apart

> from these special cases the European Communities is not entitled to notify any increase of its MFA-derived restrictions …'. [footnote omitted]
>
> The TMB may wish to comment on the introduction of EC restrictions under reference and its bearing on the balance of rights and obligations under the ATC."

346. Finally, concerning the issue of carry forward in 2004, ITCB members stated the following:

> "The overarching purpose and objective of the ATC (as also that of the WTO Agreement, of which the ATC is an integral part) is to increase market access opportunities. Yet the restraining Members are denying the use of carry-forward facility in 2004, due to which access opportunities amounting to some 5-6 per cent are being curtailed.
>
> The TMB may wish to bring this issue in its report, including, *inter alia*, with reference to Article 1.5 of the ATC which required Members to allow for continuous autonomous adjustment and increased competition in their markets."

(b) Canada

347. The communication received from Canada, providing information in response to the general request for information of the TMB included elements that are (also) relevant in the context of the implementation of the provisions of Article 2. These elements covered issues such as the "liberalization schedule", improved access for imports from least developed countries and the impact of the implementation of the provisions related to small suppliers. These issues are addressed in other sections of the report.[162]

348. In addition, under the heading of "Accelerated growth rates of quota limits", the communication from Canada stated the following:

> "The growth of Canada's domestic apparel market, according to Canada's Department of Industry, has been 1.5 per cent annually for the past five years. By comparison, with very few exceptions, the average growth rate for apparel quotas into Canada is in excess of 8 per cent a year.
>
> Imports have been growing significantly also because under the ATC growth-on-growth provisions, our annual quotas are now growing at a fast clip. In terms of major suppliers, for example, India benefits from an annual compound growth rate of almost 11.5 per cent per annum; and Pakistan's growth rates are expanding by 11.5-14.7 per cent per annum."

349. In the same submission, Canada pointed out that it "has not requested any consultations under Article 6 of the special safeguards provision. This in itself assures meaningful steps towards the full integration of textiles and clothing under the ATC."

350. Canada also stated, with respect to the administrative arrangements undertaken pursuant to Article 2.17, that they were "used to administer the provisions of the ATC and will expire along with the ATC on 31 December 2004."

(c) European Communities

351. The communication received from the European Communities in response to the TMB's request for information, clarifications or comments in the context of the preparation of the present

[162] See, in particular, paragraphs 632 and 518 below.

report contained a number of points relevant, *inter alia*, to the implementation of the provisions of Article 2. These were related to the following:

- the implementation of the integration programmes;
- the elimination of quotas *vis-à-vis* non-WTO countries;
- carry-forward facilities in 2004;
- administrative arrangements notified under Article 2.17.

352. The first two issues are addressed in another section of the present report.[163]

353. With respect to the non-availability of carry forward in 2004, the European Communities stated as follows:

- "The issue of carry-forward facilities in 2004 has already been examined or discussed on several occasions without any conclusions being reached, lastly by the WTO General Council of July of last year. The Community continues to be of the opinion that this is not foreseen by the provisions of the ATC. On the other hand, the last year of restraint is to be followed by liberalization upon expiry of the ATC, as already notified to the TMB by the Community on 17 March of this year."

354. As to the administrative arrangements notified under Article 2.17, the European Communities stated:

- "With reference to administrative arrangements and procedures for the management of restrictions [...], attention should be drawn to the fact that, as concerns respect for annual restrictions, the date of shipment, and not the date of import, is the determining factor for imposition against quota. Consequently, goods shipped before the end of 2004 but arriving early 2005 will therefore have to be set off against the quota for 2004."

(d) United States

355. The communication received from the United States in response to the TMB's request for information, clarifications or comments in the context of the preparation of the present report contained a number of points relevant, *inter alia*, to the implementation of the provisions of Article 2. These were related to the following:

- compliance with the integration programme set forth in Article 2;
- the treatment granted to special categories of suppliers such as small suppliers, least developed Members, cotton-producing exporting Members;
- the non-availability of carry forward in 2004;
- administrative arrangements notified under Article 2.17.

[163] See, in particular, paragraphs 633 and 581 below.

356. The first two issues are addressed in other sections of this report.[164]

357. As regards the fate of the administrative arrangements notified pursuant to Article 2.17 after the expiry of the ATC, the Unites States stated:

> "Article 2.17 of the ATC, along with the other provisions of the ATC, will terminate on 1 January 2005. Thus, this paragraph would not justify any restrictions on trade that are inconsistent with the WTO Agreements, including GATT 1994, after that date. However, to the extent agreed administrative arrangements are consistent with other obligations under the WTO Agreements, including GATT 1994, the United States does not believe that the termination of the ATC requires their termination. Nothing in the ATC requires Members to remove measures that are consistent with the WTO Agreements."

358. As to the question of the non-availability of carry forward in 2004, the United States stated:

> "Carry forward, which is the borrowing of quota from the subsequent agreement year for use in the current year, is obviously unavailable in the final agreement year. Countries which chose to borrow from future quotas all recognized that, ultimately, that capability would cease in the final year, and that they had already obtained the benefit in access through their initial borrowing. Most of our bilateral agreements state specifically that there is no carry forward in the final year, just as they say that there is no carryover in the first year."

7. Further comments and observations by the TMB

359. As detailed in the overview presented in this section of the report, following the accession of new Members to the WTO, during the third stage of the integration process the TMB was compelled to review, pursuant to Article 2.21, several new notifications received with reference to Article 2.1 and the respective provisions of the legal instruments of accession concerned. Most of these notifications were technically complex and very often not sufficiently clear or lacking precision regarding certain important aspects involved. Therefore, their review was time-consuming, in particular with respect to elements regarding which the need of obtaining necessary clarifications had arisen. The TMB has done its utmost with a view to establishing the proper facts and examining all the related maters, in accordance with the requirements of Article 2.21. It is also appropriate to reiterate in this context that in reviewing these notifications, the related observations received pursuant to the provisions of Article 2.2, had been fully taken into account.

360. Following the accession of new Members towards the end of Stage 2 of the integration process and at the beginning of implementation of Stage 3, the total number of restrictions taken over to the ATC regime and continuing to be maintained under it has increased quite significantly, the restrictions applied on imports from these new Members of the products not yet integrated being governed by the provisions of the ATC as from the date of their membership. As a result and also illustrating the choice of products selected for integration, although integration programmes for Stages 1 to 3 have been implemented, the total number of specific restrictions maintained at present, respectively, by Canada, the European Communities and the United States is higher than the number of restrictions applied by them under the ATC during the implementation of Stage 1 of the integration process.

361. Apart from the application by the European Communities, as of 1 May 2004, of its restrictions to the markets of its ten new member States, no other matter has been referred to the TMB or brought to its attention during the implementation of Stage 3 that could also raise issues relevant in the context of Members' compliance with the provisions of Article 2.4. Noting the concerns expressed by ITCB members that "the imposition of these new quotas is not compatible with

[164] See, in particular, paragraphs 634 and 519.

Article 2.4 of the ATC [...]", the TMB also notes, not without some concern, that the European Communities did not find it appropriate to provide the relevant information and communication regarding this measure prior to its implementation, in spite of the fact that several exporting Members had raised this matter long before in a higher WTO body.

362. The TMB also notes in this regard that its examination of this matter, at the request of a number of its members, prompted the European Communities to provide information on the measures taken by the European Communities including, *inter alia*, a reference to the relevant EC Council Regulation. Noting that this does not substitute for the proper notification of the measures in question by the European Communities, the TMB observes, however, that the information received enabled the TMB to have a better understanding of this matter on the basis of which the Body could pronounce itself on the justification (or lack thereof) of the measures in question under the provisions of the ATC.[165]

363. The TMB has to reiterate its concerns that the applicable provisions of the respective legal instruments of accession to the WTO do not provide unambiguous guidance regarding the appropriate methodology to be applied in implementing the growth-on-growth provisions (Articles 2.13 and 2.14) in relation to the level of restrictions maintained on imports from newly acceded Members. The TMB considers that it has devoted the necessary time and efforts to the examination of all aspects of this matter and has gone as far as it was possible in its review. In the absence of clear guidance from Members, the Body has taken a careful and reasonable approach in identifying those minimum requirements that should have been met, in any event, by the Members maintaining restrictions with reference to Article 2.1. It is regrettable that the United States, though using its rights under the ATC, did not find it appropriate to implement the adjustments to its respective methodology applied as advocated by the TMB on two occasions.

364. With regard to the impact of the implementation of the growth-on-growth provisions the TMB recalls that for the preparation of its second comprehensive report, in response to its request for information and comments, the members of the ITCB provided some comments regarding the implementation of these provisions of Article 2.[166] The TMB notes, furthermore, the statement of Canada, according to which "[i]imports have been growing significantly also because under the ATC growth-on-growth provisions, [Canada's] annual quotas are now growing at a fast clip." It can be observed that achieving an accelerated increase of the levels of the remaining restrictions has been exactly the function of the growth-on-growth provisions defined in Article 2. A general reference to an annual compound growth rate cannot be considered, however, as a fully reliable indication, since it can disguise potentially significant differences in the growth rates applied to the particular specific limits.

365. As far as the issue of carry forward for 2004 is concerned, the TMB notes that the related concerns were already raised by a number of exporting Members at the level of the General Council in mid-2003. Reiterating its hope that appropriate solutions to this matter, acceptable to all Members, will be found and adopted by the General Council in the near future, the TMB observes also that in paragraphs 257 to 260 above, it has made an attempt of summarizing those possible legal and economic arguments that could be relevant in this context. Also, appropriate solutions to avoiding potential reduction in market access opportunities in 2004 can be sought by relying on a number of different mechanisms or a combination thereof.

366. With respect to the administrative arrangements notified, pursuant to Article 2.17, and reviewed by the TMB during Stage 3 of the integration process, it has to be observed that in particular those submitted, respectively, by the European Communities and the United States, because of the approach taken of drawing from previously existing bilateral agreements, resulted in some respects in

[165] See paragraphs 325 to 334 above for the detailed examination of this matter by the TMB.
[166] See G/L/459, paragraphs 278.

texts which are not easily understood and, also in some instances, appear to give the impression that some of the provisions of the administrative arrangements are not fully consistent with the others. In the view of the TMB, the very careful review of these arrangements has been of primary importance with a view to obtaining some legal certainty that the administrative arrangements concerned would be implemented in full compliance with the relevant provisions of the ATC.

367. The TMB notes the statement of ITCB members according to which the notifications, respectively, by Canada, the European Communities and the United States regarding their final stage of integration to be implemented on 1 January 2005 "[...] are silent with respect to the administrative arrangements and procedures that have been in place for the implementation and administration of quota restrictions." With respect to the suggestion that "in its report, [the] TMB may reiterate its findings with respect to the issue of administrative arrangements", attention is drawn to the relevant portions of this report.[167]

368. The TMB notes the statement by Canada according to which the administrative arrangements undertaken pursuant to Article 2.17 were used to administer the provisions of the ATC and will expire, along with the ATC, on 31 December 2004.

369. With respect to the comments made by the European Communities regarding the "administrative arrangements and procedures for the management of restrictions", the TMB recalls that, pursuant to the provisions of Article 4.1, "[r]estrictions 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." The TMB also recalls, however, that all restrictions under the ATC shall stand terminated on 1 January 2005, as clearly provided in Article 9.

370. As far as the statement included in the US' communication is concerned, the TMB is of the view that Article 2.17 *per se* does not justify any restriction under the ATC either, rather, it is intended to provide appropriate arrangements with a view to implementing restrictions notified pursuant to Article 2.1. Regarding comments made with respect to the period following the termination of the ATC, the TMB observes that with the expiry of the ATC on 1 January 2005, all the provisions of the Agreement will expire and the measures notified pursuant to those provisions will have to cease to be applied, unless justified under other applicable provisions of the WTO Agreement, including GATT 1994.

B. RESTRICTIONS OTHER THAN THOSE TAKEN OVER FROM THE FORMER MFA REGIME. ISSUES RELATED TO THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 3

371. The ATC contains provisions with respect to all restrictions affecting imports of products falling under its coverage, as defined in the Annex to the Agreement. While the restrictions carried over from the former MFA regime (i.e. all MFA or MFA-type restrictions) are covered by the provisions of Article 2[168], all other restrictions, whether justified or not under GATT 1994, are dealt with in Article 3. The footnote to Article 3.1 specifies that "[r]estrictions denote all unilateral quantitative restrictions, bilateral arrangements and other measures having a similar effect." All such restrictions had to be notified to the TMB, within a specified time-frame together, whenever applicable, with information related to their justification under GATT 1994. If and as long as they are justified, they are covered by the applicable provisions of GATT 1994, and can continue to be maintained. Restrictions not justified under GATT 1994 had to be either brought into conformity with GATT 1994 within one year or have to be phased out during the duration of the ATC, according to the procedures laid down in Article 3. In addition, Members have the obligation to provide to the

[167] See, in particular, paragraph 137 above.
[168] See Section II, Subsection A of Part Three of the present report.

TMB, for its information, notifications submitted to any other WTO bodies with respect to any new restrictions or changes in existing restrictions taken under any GATT 1994 provision.

1. Restrictions notified pursuant to Article 3.1

372. Article 3.1 provides for the notification, within 60 days following the 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, whether consistent with GATT 1994 or not. The notifications were to indicate, where applicable, the GATT 1994 justification for the restrictions. It follows from the deadline specified in Article 3.1 that most of such notifications were received during the early part of the implementation of the ATC and have been covered in detail by the first comprehensive report adopted by the TMB.[169] The measures notified were also summarized in the second comprehensive report, together with developments that occurred during the implementation of Stage 2 of the integration process.[170] With the accession to the WTO of new Members for which the WTO Agreement entered into force on the day of their accession, a number of new notifications were also received during Stage 3.

(a) Restrictions notified during earlier stages of the integration process and still in force at the beginning of implementation of Stage 3

373. It would appear that in addition to the restrictions notified by Japan and Slovenia, subject to a progressive phase-out programme under the provisions of Article 3.2(b)[171], of the other restrictions notified under Article 3.1 during the early period of ATC implementation, those notified, respectively, by Malaysia, Malta, Mexico, Morocco, Peru, Thailand and Venezuela were still in force at the beginning of the implementation of Stage 3, and, in all likelihood, these measures continued to be applied during this stage. This assumption is based on the fact that none of these Members has provided information to the TMB, pursuant to Article 3.3, with respect to changes in the respective restrictions previously notified.

374. In light of the above, it would appear that Malaysia continued to apply a non-automatic import licensing procedure on batik sarongs which, according to the notification made in 1995, was justified under GATT Article XVIII:C and had been notified under GATT 1947 in July 1984. Malta reported in 1995 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). The TMB has not received any information regarding whether Malta has eliminated these measures, or not, following its accession to the European Communities. According to its notification made in 1995, 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". In reviewing this notification during Stage 1 of the integration process, 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. Morocco, Peru and Venezuela reported in 1995 that they maintained restrictions on the importation of used or worn clothing, citing the provisions of GATT Article XX(b). Thailand notified in 1995 that it maintained non-automatic import licensing under GATT Article XVIII:C on silk yarn and jute bags, applicable to all sources. During Stage 1, 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

[169] See G/L/179, paragraphs 228 to 236.
[170] See G/L/459, paragraphs 342 to 352.
[171] See paragraphs 393 to 397 below.

information, despite further reminders, the TMB decided to conclude the consideration of this notification, noting that Thailand had not provided the additional information.

(b) New notifications received with reference to Article 3.1 and reviewed by the TMB during Stage 3

375. The respective provision of the Report of the Working Party on the Accession of China spells out the possibility for WTO Members to notify certain quantitative restrictions that "were in force on the date prior to the date of China's accession [...] as being the base levels for the purpose of application of [...] Article 3 of the WTO Agreement on Textiles and Clothing ("ATC").[172] Three such notifications affecting certain imports from China were received pursuant to Article 3.1, respectively from the European Communities, Turkey and Japan. Also, China submitted a notification on restrictions it applies on the export of certain products with reference to Article 3.1. Furthermore, notifications were provided by Brazil and Poland on certain restrictions applied on imports from Chinese Taipei. Finally, the restrictions previously notified by the European Communities under Article 3.1 had also been affected as a result of the EC's enlargement.

(i) Notification by the European Communities

376. Following the accession of China, a notification received from the European Communities indicated that the restrictions notified under this provision of the ATC had been taken over from the EC's previous bilateral agreement with China and these restrictions had been "maintained under the non-MFA Agreement" between the two Parties. The notification revealed that on the day prior to the date of China's accession, the European Communities had maintained altogether 30 specific restraints (of which 25 affecting entire categories and five parts of categories) falling under the provisions of Article 3.1. Since all these restrictions are subject to a progressive phase-out programme, the respective information is provided in the context of the implementation of Article 3.2(b).[173]

377. As a separate matter, in the context of its examination of a communication received from a number of its members regarding the "[i]ntroduction by the European Union of quota restrictions in the markets of ten newly acceding States, Members of the WTO", the TMB observed that according to the information provided by the European Communities in response to the TMB, the geographical coverage of the restrictions previously notified by the European Communities pursuant to Article 3.1 had also been extended to include the ten new member States. The Body observed in this regard that Article 3 does not provide for the possibility of introducing new restrictions or changes in existing restrictions on the products covered by the ATC, except under relevant GATT 1994 provisions. According to Article 3.3, notifications submitted to any other WTO bodies with respect to such actions had to be provided to the TMB, for its information, within 60 days of their coming into effect. No such notification had been received by the TMB from the European Communities. The Body was of the view, therefore, that these restrictions as extended to cover the ten new member States of the European Communities could not find justification under the ATC.[174]

(ii) Notification by Turkey

378. Turkey notified under Article 3.1 "the required information regarding quantitative restrictions [on imports from China] not covered by the MFA Agreement". Subsequently, Turkey specified that its notification contained "the quantitative restrictions taken over from its previous bilateral agreement with China [...] maintained under the non-MFA Agreement [...]" between the two Parties. The number of the restrictions notified corresponded to that of the notification received from the European Communities and they affected the same product categories and parts of categories as in the case of

[172] See WT/ACC/CHN/49, paragraph 241.
[173] See paragraph 398 below.
[174] See also paragraph 330 above.

the EC. As to the progressive phase-out programme of these restrictions, please refer to the information provided in the context of implementation of Article 3.2(b).[175]

(iii) Notification by Japan

379. Japan provided a notification with reference to Article 3.1 indicating that it has been maintaining quantitative restrictions (in the form of an import approval system) on imports of silk yarn and silk fabric from China. In reply to the TMB's request for clarifications, Japan explained in a further communication that since 1976, the Government of Japan and the Government of China have held consultations every fiscal year to determine quota level of silk yarn and silk fabric imported from China. Through these consultations, both Members have determined the quota levels of silk yarn and silk fabric, based on the level of the preceding fiscal year, considering supply-demand of silk products in the Japanese market as well as Japanese economic situation. The quota levels were administered by the importing Member, based on an import approval system pursuant to the Foreign Exchange and Foreign Trade Law of Japan. This additional communication from Japan included information on the respective restraint levels established for the fiscal year 2001. The progressive phase-out programme of these restrictions is detailed in the context of the overview of the implementation of Article 3.2(b).[176]

(iv) Notification by Brazil

380. Following the accession of Chinese Taipei to the WTO, the TMB considered a notification made under Article 3.1 by Brazil. According to this notification, Brazil maintained a quantitative restriction on imports from Chinese Taipei of certain man-made knitted or crocheted fabrics. Brazil stated that the programme of phase-out of the restriction would be notified to the TMB according to the terms laid down in Article 3.2(b).[177]

(v) Notification by Poland

381. A notification was made under Article 3.1 also by Poland, following Chinese Taipei's accession to the WTO. According to this notification, Poland maintained a safeguard measure on imports of synthetic fabrics originating in Chinese Taipei. At the same time, Poland informed the TMB that the measure would be withdrawn on 15 September 2002.[178]

(vi) Notification by China

382. In February 2002, China provided a notification pursuant to Article 3.1. The notification indicated that China maintains quantitative export restrictions on silk yarn and woven fabrics of silk and provided information on the respective restraint levels defined for the year 2001. According to the notification, "[t]he programme to phase out the restrictions will be notified to the TMB no later than 10 June 2002."

383. In starting its examination of the notification received from China, the TMB decided to seek clarification, *inter alia*, on whether the export restrictions were applied on a global basis or to selected WTO Members and how they operated in practical terms. With respect to the statement of China that "the programme to phase-out the restrictions will be notified to the TMB no later than 10 June 2002", the TMB, referring to paragraph 1.3 of Part I of the Protocol of Accession of China to the WTO and to Article 3.2(b) of the ATC, expressed its expectation that this phase-out programme would be provided in the near future. Furthermore, the TMB observed that China, though it had notified that it

[175] See paragraph 399 below.
[176] See paragraphs 400 and 401 below.
[177] See paragraph 402 below.
[178] See paragraph 403 below.

wished to retain the right to use the transitional safeguard mechanism during the transition period of the Agreement, at the time of the notification made under Article 3.1 had not yet notified the programmes of integration referred to in Articles 2.6, 2.8(a) and 2.8(b) of the ATC. The TMB, therefore, sought clarification regarding the extent (if any) to which the export restrictions notified by China were being affected by these programmes of integration.

384. In its response to the TMB, China specified that the export quotas notified, affecting silk yarn and woven fabrics of silk, were applied on a global basis. In practice, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) allocated quotas to provinces based on past performances. Provincial offices of MOFTEC further allocated quotas to different enterprises, taking into consideration past performances, enterprise capacities and market situation. A quota-holding enterprise could then make applications to the provincial office of MOFTEC for export licence within its quota limit.

385. In resuming its examination of this notification, also on the basis of additional information submitted by China, the TMB considered different aspects involved, such as the scope of the application of Article 3 (i.e. whether it also applies to export restrictions); how the recourse to the provisions of Article 3 fits with provisions of the Report of the Working Party on the Accession of China dealing with export restrictions; the management and administration of the restrictions in question and their system of allocation, including the availability of information, or the lack thereof, on the possible breakdown of export quotas according to destinations.

386. The TMB noted, *inter alia*, that Article 3.1 uses the word "restrictions" without any additional qualifications and that the footnote to this provision related to the same term states the following: "Restrictions denote all unilateral quantitative restrictions, bilateral arrangements and other measures having a similar effect." The language of Article 3 does not limit the application of this provision to any specific type of restriction. The export quotas maintained by China affecting silk yarn and woven fabrics of silk are, undoubtedly, unilateral quantitative restrictions, corresponding to the definition provided in the footnote referred to above. Therefore, also in view of the lack of any further precision in the respective provision of the ATC, export restrictions are not *a priori* excluded from the scope of application of Article 3. This conclusion is also in line with past practice in the TMB, whereby the notification under Article 3 of certain measures affecting exports of some textile products was not questioned.[179]

387. The TMB noted, furthermore, that the additional notification by China referred to "restrictions on certain textile products which fall under the coverage of ATC and are subject to Article 3 of [that] Agreement". This reference presumably indicated that, in the view of China, the measures in question should be considered under the applicable provisions of the ATC. It was observed that the notification of these export restrictions under Articles 3.1 and 3.2(b) did not appear to be in contradiction with the relevant portion of the Report of the Working Party on the Accession of China.

388. The TMB also recalled that in response to the TMB's queries, China had provided information regarding the management and administration of the export restrictions, including their system of allocation. Though issues had been raised regarding the possibility of getting indications or statistical information on the possible allocation of export quotas according to destinations, it was understood that the quotas were applied on a global basis and that allocation by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), also through its provincial offices, was limited to the designation of those Chinese domestic enterprises that could apply for export licences within their allocated quota limits.

[179] In 1995, Japan notified the application of an export approval system affecting certain products with certain specified destinations (United States, European Communities).

389. The TMB considered also the progressive phase-out programme provided by China in the sense of Article 3.2(b).[180] In doing so, it could be also established that the products subject to the restrictions had not been included by China in its Stage 1 to 3 integration programmes.

2. Progressive phasing out of restrictions not justified or their being brought into conformity with GATT 1994

390. Article 3.2 provides that "Members maintaining restrictions falling under paragraph 1 [of Article 3], except those justified under GATT 1994 provision, shall either:

(a) bring them into conformity with GATT 1994 within one year following the entry into force of the WTO Agreement, and notify this action to the TMB for its information; or

(b) phase them out progressively according to a programme to be presented to the TMB by the Member maintaining the restrictions not later than six months after the date of entry into force of the WTO Agreement. This programme shall provide for all restrictions to be phased out within a period not exceeding the duration of this Agreement. The TMB may make recommendations to the Member concerned with respect to such a programme".

(a) Measures brought into conformity with GATT 1994, pursuant to Article 3.2(a)

391. During the period of implementation of Stage 3 of the integration process, no notification has been received by the TMB with explicit reference to Article 3.2(a). It can be established, therefore, that none of the Members which notified restrictions with reference to Article 3.1 during Stage 3 of the integration process invoked specifically the provisions of Article 3.2(a). It should be noted, however, that the elimination by Poland of the restrictions maintained on certain imports from Chinese Taipei after less than nine months of Chinese Taipei's WTO membership can also be considered as a measure falling under Article 3.2(a).[181]

(b) Programmes for the progressive phasing-out of restrictions within a period not exceeding the duration of the ATC, pursuant to Article 3.2(b)

392. During the implementation of Stage 1, three Members provided progressive phase-out programmes of restrictions notified under Article 3.1, namely Hungary, Japan and Slovenia. While Hungary eliminated all its restrictions *vis-à-vis* all WTO Members on 1 January 1998[182], Japan and Slovenia continued to maintain restrictions and implement their respective programmes falling under Article 3.2(b) also during Stage 3 of the integration process. Furthermore, during the same stage, the TMB also reviewed the respective phase-out programmes applicable to restrictions notified under Article 3.1 at the early part of implementation of Stage 3.

(i) Continuation of the implementation of the respective programmes notified during Stage 1

(1) Japan

393. During Stage 1, Japan reported that the removal of its restrictions relating to the importation of silk yarns and fabrics from Korea would be achieved within the parameters of Article 3.2(b) i.e. "within ten years after the date of the entering into force of the WTO Agreement". However, the specific programme was to be linked to the import system for raw silk which would not be finalized

[180] See paragraph 404 below.
[181] See paragraphs 381 above and 403 below.
[182] See G/L/459, paragraph 358.

until the last year of the implementation of the Agreement on Agriculture. Hence, according to the notification, the final terms of the phase out of the restrictions for fabrics and yarns could only be provided by 31 March 2001, when Japan would review the necessity of further maintaining the measures in question. The TMB expressed the expectation that the implementation of the programme, in conformity with Article 3.2(b), would be such as to provide, as from the beginning, appropriate progressive increases to the level of restrictions on imports of silk yarn and silk fabric from Korea. Subsequently, Japan provided information to the TMB on the consultations held with Korea, as a result of which the two governments "came to share the recognition" of specified trade levels in the two products concerned for the Japanese fiscal year 1996. The TMB observed that the restraint levels agreed provided some increases compared to the previous period. At the same time, the TMB accepted, in accordance with its working procedures, the request made by one of the parties that the relevant information on the specific levels should be kept confidential.[183]

394. During the implementation of Stage 2, Japan kept the TMB informed on the respective trade levels applied to imports of silk yarn and silk fabrics for the fiscal years 1998, 1999 and 2000 which were the result of consultations held with Korea. It was observed that small increases in the respective levels had been achieved. In a subsequent communication, dated April 2001, Japan provided information on "the continuation of the measures on importation of silk yarn and silk fabric from the Republic of Korea after April 2001". According to the communication, based on the Uruguay Round Agreement on Agriculture, import restrictions applied to imports of raw silk, from which silk yarn and silk fabric are made, were converted into ordinary customs duties in April 1995. According to this tariff system, the tariff equivalent imposed on the imported raw silk was 6,978 yen per kilogramme for the Japanese Fiscal Year 2000. "Consequently, the Japanese domestic silk industry is still unable to obtain raw silk at the international market price. This tariff equivalent would be maintained until the WTO agricultural negotiation is concluded. Since the negotiation is still underway, the situation surrounding Japan's import of silk will not change from April [2001]. Therefore, the Government is not in the position to review the necessity to maintain the measures. Thus the Government has decided to postpone the review and maintain the present measures". In taking note of Japan's communication, the TMB recalled that, pursuant to Article 3.2(b) and to the related commitment undertaken by Japan, these measures had to be completely phased out over the duration of the ATC. Furthermore, the TMB reiterated its expectation that the implementation of the continued phase-out 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.[184]

395. Subsequently, Japan provided information to the TMB on the respective trade levels applied to imports of the two products for the fiscal years 2001 and 2002. These levels were established in consultation with Korea and represented an increase compared to the corresponding previous levels (an increase of 3 per cent with respect to both products in fiscal year 2001 and a further increase, respectively, of 3.8 and 4.8 per cent in fiscal year 2002). The TMB has not received information regarding the annual levels applied to fiscal years 2003 and 2004.

(2) Slovenia

396. 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 restrictions had been abolished on 1 January 1997, as scheduled, for 95 of the total of 140 products. In January 2001, the TMB sought information from Slovenia on the implementation of the second phase of its progressive phase-out programme. In reply, Slovenia confirmed that the quantitative restrictions which were to be

[183] See G/L/459, paragraph 356 and related footnote.
[184] See G/L/459, paragraphs 360 and 361

eliminated on 1 January 2001, according to the phase-out programme presented, had actually been eliminated.[185]

397. No communication has been received either from the European Communities or from Slovenia regarding the possible impact of Slovenia's EU accession on the phasing-out of the remaining restrictions. It would appear, however, that by taking over the EC's respective trade regimes Slovenia was supposed to eliminate the remaining restrictions it had notified under Article 3.

(ii) New phase-out programmes notified during Stage 3

(1) European Communities

398. In examining the notification received, pursuant to Article 3.1, from the European Communities, of the restrictions maintained on certain imports from China[186], the TMB noted, *inter alia*, the confirmation of the EC according to which the annual growth rates that had been applied under the bilateral agreement in force between the European Communities and China prior to the date of China's accession to the WTO would continue to apply in 2002, 2003 and 2004. As regards the details regarding a phase-out programme in the sense of Article 3.2(b) of the restrictions notified, the European Communities provided a list of the restrictions that had been eliminated on 11 December 2001 as a result of the integration programmes of the European Communities for Stages 1 and 2, as well as a list of the restrictions eliminated as of 1 January 2002 as a result of the implementation of the third stage of the integration programme of the European Communities[187]. Furthermore, the European Communities stated that "according to Annex I to the bilateral agreement [between the European Communities and China] the Commission intends to phase out the 'restrictions on all remaining products no later than 1 January 2005', depending on China's progress in removing state trading in silk products. In addition, both parties can at any time request consultations in this regard". The TMB understood that, in any event, all remaining restrictions under Article 3.1 would be increased annually by the application of the respective growth rates notified and would be eliminated, at the latest, on 1 January 2005. On that basis, the TMB took note of the notification.

(2) Turkey

399. As regards the details regarding a phase-out programme in the sense of Article 3.2(b) of the restrictions notified pursuant to Article 3.1 and applied on certain imports from China[188], Turkey provided a list of the restrictions that had been eliminated on the day of accession of China to the WTO, as well as a list of the restrictions eliminated as of 1 January 2002.[189] Furthermore, Turkey stated that it "intends to 'phase-out' the restrictions on all remaining products no later than 1.1.2005". Also, Turkey confirmed that the growth rates noted in Annex to the notification made under Article 3.1 applied to the remaining quantitative restrictions in the years 2002-2004. On that basis, the TMB took note of the notification.

(3) Japan

400. With respect to what constituted a phase-out programme in the sense of Article 3.2(b) of the restrictions maintained by Japan on certain imports from China[190], the TMB noted, *inter alia*, that, according to Japan's notification, the quota levels would be increased annually and the measures would be removed no later than 1 January 2005. The TMB observed that in Japan's response to

[185] See G/L/459, paragraphs 357 and 362.
[186] See paragraph 376 above.
[187] See paragraph 115 above.
[188] See paragraph 378 above.
[189] See paragraph 128 above.
[190] See paragraph 379 above.

questions posed by the TMB, though the quota levels for the Japanese fiscal year 2001 had been provided and the functioning of the phase-out programme explained, no information had been provided on the quota levels for the fiscal year 2002, nor had information been made available as to when the annual consultations between Japan and China with a view to determining those levels would take place. The TMB further observed that in order to allow for predictability, trade levels for the coming year should normally be known sufficiently in advance, so that exporters and importers could plan their business accordingly. The TMB was thus particularly concerned that the Japanese fiscal year 2002 had started without the levels for silk yarn and silk fabric for that year being agreed. The TMB, therefore, expected to be informed by Japan as soon as possible of the timing of the annual consultations between Japan and China, as well as on the trade levels to be determined for both silk yarn and silk fabric for the Japanese fiscal year 2002.

401. In a follow-up communication, Japan stated that the quantitative restrictions maintained on imports from China of silk yarn and silk fabric would be increased for each of the Japanese fiscal years 2002, 2003 and 2004, by 3.8 per cent for silk yarn and 4.8 per cent for silk fabrics. In addition, the measures will be eliminated on 1 January 2005. On this basis, the TMB took note of the phase-out programme presented by Japan.

(4) Brazil

402. At its meeting of July 2002, the TMB considered a notification made under Article 3.2(b) by Brazil of the phase-out programme of the quantitative restriction maintained by Brazil on imports from Chinese Taipei of certain man-made knitted or crocheted fabrics.[191] According to the notification, the quantitative restriction will be dismantled on 14 September 2003. Additionally, for the quota year beginning on 15 September 2002 and running until 14 September 2003, the quota level would be increased by 6 per cent. Subsequently, at its meeting of March 2003, the TMB observed that the notification made by Brazil under Article 6.9 of a restraint measure agreed with Chinese Taipei, contained, in addition, a bilateral agreement between the two Members with reference to the phase-out programme notified by Brazil pursuant to Article 3.2(b), of the quantitative restrictions in question. According to this agreement, the restraint level for the last quota year (i.e. 15 September 2002 to 14 September 2003) was increased by 43.75 per cent and the termination of the restriction was brought forward to 30 June 2003. The TMB took note of these notifications.

(5) Poland

403. According to its notification submitted in June 2002, Poland maintained a safeguard measure on imports of synthetic fabrics originating in Chinese Taipei.[192] At the same time, Poland informed the TMB that the measure would be withdrawn on 15 September 2002. The TMB observed that although the measure had been notified more than 60 days after the accession of Chinese Taipei to the WTO, its withdrawal on 15 September 2002 fulfilled the requirements of Article 3.2. The TMB took note of this notification.

(6) China

404. As reported earlier, China notified the export restrictions applied by it on silk yarn and silk fabric with reference to the provisions of Article 3.1.[193] With regard to the elements of the respective notification which constitute a phase-out programme in the sense of Article 3.2(b), the TMB noted the reaffirmation by China that the two export quotas would be eliminated no later than 1 January 2005. Furthermore, the respective levels of both quotas for silk yarn and woven fabrics of silk had been increased by 10 per cent for the year 2002, compared to the levels in 2001. In addition, China

[191] See paragraph 380 above.
[192] See paragraph 381 above.
[193] See paragraphs 382 to 389 above.

indicated that, in both cases, the quota levels for 2003 and 2004 would be determined by applying respectively an increase of 10 per cent over the levels of the previous year. On this basis, the TMB took note of the phase-out programme presented by China.

3. Information with respect to new restrictions or changes in existing restrictions, pursuant to Article 3.3

405. Article 3.3 requires that Members provide to the TMB, for its information, notifications submitted to any other WTO body 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.

(a) Developments during the earlier stages of the integration process that might be still relevant in the context of implementation of Stage 3

(i) European Communities: consultation levels on certain imports from Egypt

406. During Stage 1, the European Communities notified with reference to Article 3.3 that it had maintained consultation levels in relation to certain imports, *inter alia*, from Egypt. Subsequently, the European Communities provided information regarding the increase implemented during Stage 1 in the consultation levels affecting imports from this Member.[194]

407. In January 1998, the European Communities informed the TMB, pursuant to Article 3.3, that, with effect from 1 January 1998, it no longer maintained any consultation levels on imports from Malta, Morocco and Tunisia. In another communication, the European Communities provided information on agreed changes to the consultation levels it maintained *vis-à-vis* certain imports from Egypt. According to this notification, these consultations levels, established for 1998 and 1999, had been introduced in the context of a preferential trade agreement with Egypt and were being notified under Article XXIV of the GATT. Subsequently, in January 2000, the TMB considered another notification received from the European Communities under Article 3.3, for the Body's information, of agreed changes to the consultation levels maintained in respect of two product categories *vis-à-vis* Egypt. According to this notification, since such consultation levels had been introduced in the context of a preferential trade agreement with Egypt, the agreed changes affecting the consultation levels for 2000 and 2001 would be notified under Article XXIV of the GATT. The TMB took note of these notifications.[195]

(ii) Joint communications by the European Communities and Turkey

408. In November 1997, the TMB received a joint communication from the European Communities and Turkey under Article 3.3. This communication consisted of a copy, for the TMB's information, of the notification made to the Chairman of the Committee on Regional Trade Agreements concerning the customs union between the two parties, as well as of the details of new quantitative limits introduced by Turkey with effect from 1 January 1996, in respect of imports of certain textile and clothing products from certain WTO Members which, according to the notification, were necessary to give effect to the customs union in accordance with Article XXIV of GATT 1994. The TMB took note of this information. The TMB recalled that notifications under Article 3.3 have to be provided to the TMB within 60 days of any new restrictions or changes in existing restrictions on textile and clothing products, taken under any GATT 1994 provision, coming into effect.

409. In May 1998, the European Communities and Turkey addressed another joint communication to the TMB, referring to Article 3.3. It contained a copy, for the TMB's information, of a joint

[194] See G/L/459, paragraph 364.
[195] See G/L/459, paragraphs 370 and 371.

communication from the parties to the European Communities/Turkey Customs Union to the Chairman of the Committee on Regional Trade Agreements, "concerning details of changes, effective as from 1 January 1998, in respect of the quantitative limits applied by Turkey on imports of certain textiles and clothing products from certain WTO Members in conformity with its commitments arising out of the customs union and with the provisions of Article XXIV of GATT 1994". The communication listed in detail the restrictions applied on imports from the following WTO Members: Argentina; Brazil; Egypt; Hong Kong, China; India; Indonesia; Korea, Macao; Malaysia; Pakistan; Peru; Philippines; Singapore; Sri Lanka and Thailand. The TMB took note of this information. The TMB recalled that notifications under Article 3.3 have to be provided to the TMB within 60 days of any new restrictions or changes in existing restrictions on textile and clothing products, taken under any GATT 1994 provision, coming into effect.

410. In a further joint communication, dated April 2000, the European Communities and Turkey provided a copy, for the TMB's information, pursuant to Article 3.3, of a joint communication from the parties to the European Communities/Turkey Customs Union to the Chairman of the Committee on Regional Trade Agreements, "concerning details of changes for the year 2000 in respect of the quantitative limits applied by Turkey on its imports of certain textiles and clothing products from certain WTO Members in conformity with its commitments arising out of the customs union and with the provisions of Article XXIV of GATT 1994". The TMB took note of this information with the observation that this taking note was without prejudice to the rights and obligations of Members under the WTO.[196]

(b) Implementation during Stage 3: Communications received with reference to Article 3.3

411. In February 2002, the TMB received a communication from the European Communities, with reference to Article 3.3, of agreed changes made to the consultation levels the EC maintained vis-à-vis Egypt for 2002 and 2003. According to this notification, these consultation levels (affecting imports of products belonging to two EC categories) had been introduced in the context of preferential trade agreements with Egypt and were notified by the European Communities under Article XXIV of the GATT.

412. No information has been received so far regarding the consultation levels established for the year 2004 or, if applicable, about the elimination of the consultation levels in question.

413. Against the background described in paragraphs 408 to 410 above, it should be noted that no communication has been received by the TMB, for its information, regarding changes for the years 2002, 2003 and 2004, of the quantitative limits applied by Turkey on its imports of textiles and clothing products from several WTO Members. In its reply to the TMB's general request for notifications or information in the context of the preparation of the present report, Turkey provided, *inter alia*, a list indicating the quantitative restrictions eliminated and also the WTO Members affected, as a result of the implementation of its Stage 3 integration programme. Turkey stated furthermore that"[w]ith the accession of the People's Republic of China and Chinese Taipei, these Members have also been included in the implementation of the third stage of integration. This issue had been notified to the TMB [...]. Regarding Article 3.3 of the ATC, there has not been any other change within the third stage." It is assumed that the last sentence of this statement was intended to indicate that apart from the elimination of certain restrictions as a result of Turkey's implementation of its Stage 3 integration programme, all other restrictions listed in the last joint communication received from the European Communities and Turkey[197] continued to be maintained during the period of implementation of Stage 3 of the integration process. However, the TMB had no indication that Turkey had not continued to increase the respective restraint levels annually, by applying the growth rates previously established.

[196] See G/L/459, paragraphs 367 to 369.
[197] See paragraph 410 above.

4. Other provisions of Article 3

414. 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 Article 3. Actions with respect to such notifications may be pursued under relevant GATT 1994 provisions or procedures in the appropriate WTO body. No notification has been received with reference to Article 3.4 during the implementation of Stage 3 of the integration process. It should be noted that the same applied also to Stages 1 and 2.

415. Article 3.5 requires the TMB to circulate the notifications made pursuant to any of the provisions of Article 3 to all Members for their information. This requirement has been fully met, in a timely manner, also during the implementation of Stage 3.

5. Further observations and comments by the TMB with respect to the application of Article 3 during Stage 3 of the integration process

416. With the accession of new Members to the WTO, a number of new notifications were received during Stage 3 with reference to Article 3.1. The TMB reviewed each of them, in accordance with the applicable provisions of the ATC. In particular, the TMB put special emphasis on the review of the respective phase-out programmes falling under the provisions of Article 3.2(b). Before taking note of such programmes, the TMB ascertained that each of them meets the basic criteria established in Article 3.2(b), i.e. that the restrictions concerned will be eliminated at the latest on 1 January 2005 (in other words, "within a period not exceeding the duration of this Agreement," as specified in the same Article) and their phasing out is progressive in the sense that the levels of the respective restrictions are gradually increased during the period of their application.

417. In its second comprehensive report, the TMB stated, *inter alia*, the following:

> "In the view of the TMB, compliance with the provisions of Article 3.3 has also not been fully satisfactory during the second stage of the integration process. While it is true that the measures referred to in Article 3.3 are not taken under the ATC, rather under the provisions of GATT 1994, it is also appropriate to re-emphasize the importance, for transparency purposes, of providing to the TMB (and through the TMB, pursuant to Article 3.5, to all WTO Members) timely information on any new restriction, or on changes in existing restrictions, taken under any GATT 1994 provision. Furthermore, any change to a measure that can result from a ruling of the Dispute Settlement Body by the Members concerned, giving rise to changes in existing restrictions and notified to any other WTO body should also be provided to the TMB, under Article 3.3, for its information. Likewise, disinvocation of an applicable GATT 1994 provision by the Members concerned can also lead to changes in existing restrictions in the sense of Article 3.3 and, therefore, should be provided to the TMB under this provision, for its information."[198][footnote omitted]

418. The TMB is of the view that its statement regarding the compliance with the provisions of Article 3.3 and reflected above applies also to the period of implementation of Stage 3 of the integration process. This is why the TMB made an appeal to Members, on two occasions (in April and September 2003), to provide to the Body notifications or information that are relevant in particular in the context of implementation of the provisions of Article 3.3.[199]

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[198] See G/L/459, paragraphs 376.
[199] See paragraph 188 above.

419. With regard to issues raised during earlier stages by the Members concerned in the context of Article 3 or matters which might be relevant in this regard, the TMB makes the observations as follows.

420. With respect to the quantitative restrictions introduced by Turkey in 1996, the second comprehensive report of the TMB provided an overview of the main conclusions and the respective recommendation adopted by the Dispute Settlement Body in response to the claims presented by India.[200] It is appropriate to recall, in particular, that according to the Report of the Appellate Body in this case, "[...] *Article XXIV may justify a measure which is inconsistent with certain other GATT provisions*. However, in a case involving the formation of a customs union, this "defence" is available only when two conditions are fulfilled. *First, the party claiming the benefit of this defence must demonstrate* that the measure at issue *is introduced upon the formation of a customs union* that fully meets the requirements of sub-paragraphs 8(a) and 5(a) of Article XXIV. And, *second*, that party must demonstrate that *the formation of that customs union would be prevented if it were not allowed to introduce the measure at issue*. Again, *both* these conditions must be met to have the benefit of the defence under Article XXIV".[201] Furthermore, the Appellate Body reached the conclusion that Turkey was not obliged, when concluding its customs union with the EC, to adopt a WTO-inconsistent measure, that is, to impose quantitative restrictions inconsistent with Article XI of GATT and 2.4 of the ATC, since a WTO-consistent alternative could have been used instead. The Appellate Body stated, *inter alia*, that "...[a] system of certificates of origin, would have been a reasonable alternative ..."[202] and, for this reason, concluded that "[...] Turkey was not, in fact, required to apply the quantitative restrictions at issue in this appeal in order to form a customs union with the European Communities. Therefore, Turkey has not fulfilled the second of the two necessary conditions that must be fulfilled to be entitled to the benefit of the defence under Article XXIV. Turkey has not demonstrated that the formation of a customs union between Turkey and the European Communities would be prevented if it were not allowed to adopt these quantitative restrictions. Thus, the defence afforded by Article XXIV under certain conditions is not available to Turkey in this case, and Article XXIV does not justify the adoption by Turkey of these quantitative restrictions."[203]

421. While the TMB is aware that the findings, conclusions and recommendations adopted by the DSB are directly applicable only to the parties involved in the dispute and, therefore, to the quantitative restrictions imposed by Turkey on the import of certain products from India, it can be observed that Turkey has continued to maintain such restrictions on imports from several Members also during the implementation of Stage 3.[204]

422. As indicated also in the TMB's second comprehensive report[205], Pakistan had maintained import restrictions affecting mostly textile and clothing products, with reference to Article XVIII:B of GATT 1994. In the framework of consultations held on this matter in the Committee on Balance-of Payments Restrictions, Pakistan had committed itself to removing all these restrictions by the fiscal year 2001 (i.e. until June 2002). In December 2001, Pakistan submitted a notification to the Committee indicating that it had removed the restrictions applied on imports of woven fabrics of cotton; woven fabrics of synthetic staple fibres and artificial staple fibres; special woven fabrics; and bed linen, toilet linen and kitchen linen. The notification stated that Pakistan had "implemented its phase-out plan in full, in advance of the timeframe agreed by the Committee on Balance-of-Payments Restrictions."[206] It can be established, therefore, that during the implementation of Stage 3 of the integration process, Pakistan has not maintained restrictions any more with reference to

[200] See G/L/459, paragraph 377.
[201] See WT/DS34/AB/R, paragraph 58.
[202] Ibid., paragraph 62.
[203] Ibid., paragraph 64.
[204] See also paragraph 413 above.
[205] See G/L/459, paragraph 377.
[206] See WT/BOP/N/509.

Article XVIII:B of GATT1994. In noting these developments and the completion by Pakistan of its phase-out plan ahead of schedule, the TMB observes that in 1995 and 1996 Pakistan submitted notifications, pursuant to Article 3.1, on its import restrictions maintained on account of balance-of-payments reasons. Also in this light, Pakistan should have provided information also to the TMB, under the provisions of Article 3.3, of the elimination of the restrictions in question.

423. The second comprehensive report noted also that in December 2000, Bangladesh provided a notification to the Committee on Balance-of-Payments Restrictions listing all the items restricted under Article XVIII:B, including several products falling under the coverage of the ATC. This same notification included a phase-out plan for all these restrictions, a few affecting textile and clothing products to be eliminated on 1 January 2003, followed by the lifting of a few other restrictions one year later, while the remaining restrictions will be abolished on 1 January 2005.[207] While it would appear on the basis of reports of the Committee on Balance-of-Payments Restrictions[208] that Bangladesh had already begun the removal of these restrictions under the agreed timetable, the TMB observes that it has not received any information in this regard from Bangladesh under the provisions of Article 3.3.

C. APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM. IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 6

424. This Section describes the developments which followed the requests for consultation made by Members pursuant to Article 6 of the ATC during the period of implementation of Stage 3 of the integration process. A follow-up to actions pursuant to Article 8, which might have followed Article 6 actions, is also included in the overview provided below.

425. 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, "[t]he 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. Also, as a result of such consultations, the importing Members may decide not to introduce the safeguard measure envisaged. In cases where a restraint measure is introduced 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 "[t]he 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." In addition, Article 6.11 provides that "[i]n 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.

[207] See G/L/459, paragraph 377.
[208] See WT/BOP/R/60 and 67.

426. 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 that in making a determination of serious damage, or actual threat thereof, the Member invoking the provisions of Article 6 has to examine the effect of the increased quantities of total imports on the state of the particular industry, as reflected in changes in the economic variables listed in the same provision. Article 6.4 outlines circumstances under which such serious damage, or actual threat thereof, can be attributed to imports from certain Members.

427. Article 8.9 states that "Members shall endeavour to accept in full the recommendations of the TMB, which shall exercise proper surveillance of the implementation of such recommendations". However, 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".

428. During the third stage of the implementation of the integration process, two restraint measures agreed between Members pursuant to Article 6.9, as a result of requests for consultations made in October 2002 were referred to the TMB which reviewed them in accordance with the applicable provisions of Article 6. Also, the TMB exercised surveillance of the implementation of its recommendation made pursuant to Article 8.10 in November 2001, i.e. still during the implementation of Stage 2 of the integration process.[209]

1. Notifications under Article 6.9

(a) Brazil/Chinese Taipei: imports by Brazil of certain synthetic woven fabrics from Chinese Taipei.

429. At the end of October 2002 Brazil requested consultations with Chinese Taipei pursuant to Article 6.7. Consultations produced agreement that the situation called for a restraint, for two consecutive quota periods, from 27 January 2003 to 31 December 2004, on imports of other woven fabrics, containing 85 per cent or more by weight of textured polyester filaments, dyed, without rubber filaments (HS/NCM Code 5407.5210)[210] and of other woven fabrics, containing 85 per cent or more by weight of non-textured polyester filaments (HS/NCM Code 5407.6100). The agreed restraint was notified by Brazil pursuant to Article 6.9, and reviewed by the TMB at its meetings in February and March 2003 since, in the course of its review, the TMB, in order to be well-placed to assess whether the products in question were being imported in such increased quantities as to cause serious damage to the Brazilian industry producing like and/or directly competitive products, had decided to seek additional information from Brazil and to revert to its review at its subsequent meeting. The TMB observed, *inter alia*, that the specific and relevant factual information provided by Brazil in accordance with Article 6.7 contained data with respect to developments in total imports as well as several economic variables, including production, production capacity and capacity utilization, exports and prices, for three subsequent twelve-months periods, up to the period September 2000–

[209] See paragraph 38 above.
[210] NCM: Mercosul Common Tariff ("Nomenclature Comun do Mercosul").

August 2001. Furthermore, Brazil provided information for the period August 2001 to September 2002 (the period referred to in Article 6.8) on imports, as well as 2002 data for several other economic variables (share of imports in the apparent consumption, production, domestic sales, exports, import and domestic prices, as well as preliminary indications regarding profitability). The TMB recalled that, pursuant to Article 6.9, in order to determine whether the agreement was justified in accordance with the provisions of Article 6, it shall have available to it the factual data provided in accordance with Article 6.7, as well as any other relevant information provided by the Members concerned. The TMB also observed that both products subject to the agreement fell under the coverage of the ATC and that neither the products of HS/NCM Code 5407.5210 nor those of HS/NCM Code 5407.6100 had been integrated by Brazil in any of its three integration stages.

430. Examining developments in total imports of Brazil of the two products in question, the TMB established that such imports had increased more than twelvefold during a period of slightly less than four years, by any standard a significant development that warranted a close examination of the possible impact of such increased imports on the state of the Brazilian domestic industry producing like and/or directly competitive products. Before analysing the effect of this increase of total imports on the state of the domestic industry of Brazil, as reflected in changes in the relevant economic variables set out in Article 6.3, the TMB first addressed some issues arising from the methodology followed by Brazil in collecting data and providing factual information in support of its case. First, the TMB observed that the information provided by Brazil regarding the evolution of production appeared ambiguous as to whether the volume reported for the period September 1998 to August 2001 amounted to 65 per cent of the domestic production of all types of synthetic woven fabrics or of only that of the two specific products subject to the restraint agreed between Brazil and Chinese Taipei. After careful examination, the TMB assumed that while the domestic industry producing the products subject to the agreed restraint corresponded to the broader industrial segment producing different types of synthetic woven fabrics, the volume of 65 per cent reported had to be related to the output of the two specific products for which serious damage had been claimed. Second, the TMB observed that questions could also be raised regarding the extent to which the situation in the domestic industry producing like and/or directly competitive products had been captured by the factual information submitted by Brazil. A careful reading of the detailed factual information led the TMB to conclude that the entire domestic industry consisted of and was limited to the 64 companies represented by SINDITEC (i.e. the regional industry association which had initiated the investigation and the resulting measure). Thirty-two of the 64 companies "that answered the questionnaire" initiating the process of investigation produced around 65 per cent of the total domestic production and the other 32 companies apparently had not provided specific information for the purpose of the investigation. The TMB recalled the observations it had already made on previous occasions that although the ATC does not provide a definition of what constitutes the domestic industry producing like and/or directly competitive products, the failure to provide information on a significant part of such an industry could bring about important uncertainties and could, therefore, hamper the ability of both the importing Member and the TMB to assess the situation of the domestic industry in question. In this particular case, the TMB noted and appreciated the fact that Brazil seemed to have shared similar concerns and that it had made efforts to remedy this situation by trying to provide information which was supposed to cover the entire domestic industry. This had essentially been achieved by extrapolating the data received from the 32 companies whose production volume in the period September 1998 to August 2001 was reported to correspond to 65 per cent of the total domestic production, on the assumption that the share in the total production volume of the companies that had not answered the questionnaire had remained stable, representing 35 per cent, throughout the three-year period considered, in order to arrive at data for those companies. While making certain observations in this regard, the TMB accepted that Brazil had sought to provide factual information covering the entire domestic industry producing like and/or directly competitive products.

431. Furthermore, regarding the specificity of the factual information provided by Brazil the TMB recalled that it had already emphasized on previous occasions 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

products subject to the transitional safeguard measure, 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. It was also understood that there could be a situation where it had not been possible for the importing Member to provide product-specific information and data with respect to each and every economic variable envisaged in Article 6.3. The TMB had also expressed the view that in such a case and in respect of such variables, factual information and data that related as closely as possible to the products in question should be examined and submitted. Bearing this in mind, the TMB also noted that Brazil had provided factual information on each of the economic variables listed in Article 6.3. In addition, the information had covered domestic sales, which is not explicitly mentioned in the same Article. Furthermore, the factual information provided by Brazil was specific to the products subject to the safeguard measures in relation to output, inventories, market share, exports, capacity utilization, domestic prices and productivity, whereas, data regarding employment, wages, profits and investments were related to a somewhat broader segment of the industry. Taking all the above into consideration, the TMB noted that Brazil had essentially complied with the requirements of providing specific and relevant factual information for the period covered by its investigation in order to substantiate its case.

432. In order to analyse the possible effects of increased total imports on the state of the Brazilian industry, the TMB examined one by one the changes in the relevant economic variables (domestic output, utilization of production capacity, inventories, domestic sales, exports, evolution of average domestic prices, employment, productivity, wages, profitability, investments and market share) as reported by Brazil.[211] Furthermore, recalling that pursuant to Article 6.2, serious damage must demonstrably be caused by increased quantities in total imports of the products in question and not by such other factors as technological changes or changes in consumer preference, the TMB noted the view expressed by Brazil (which seemed to be supported by the information that nearly all investment in plant modernization had been targeted towards acquiring equipment that contained technological innovation more suitable for working with synthetic weave) that the Brazilian textile industrial equipment was on par with competitors in other developing countries. Also, the TMB had no reasons and no grounds to question Brazil's statement that woven fabrics produced by its domestic industry "contain superior quality which pleases both domestic and foreign consumers". In light of the above, the Body accepted the view that the difficulties experienced by the Brazilian domestic industry could not result from technological changes or changes in consumer preferences. The TMB, having considered the changes reported by Brazil in each of the relevant economic variables, concluded that the significant increase of the volume of total imports of the two products, coupled with their low price level, had caused serious damage to the Brazilian domestic industry, as reflected, in particular, in the significant drop in output and domestic sales, the significant loss of market share and the decline and subsequent negative profitability of the companies concerned. This conclusion was also supported, to a certain extent, by the decrease in the employment level and by the trends observed regarding the investments made. The TMB observed, furthermore, that the evolution of exports was largely irrelevant given the insignificant quantities involved, while information regarding other economic variables such as capacity utilization, inventories, productivity and wages did not provide meaningful guidance in assessing the overall state of the domestic industry as affected by the significant increase in total imports. Accordingly, the TMB found that Brazil had successfully demonstrated, pursuant to the provisions of Articles 6.2 and 6.3, that the two products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products.

433. As to the attribution of the serious damage to imports from Chinese Taipei, the TMB recalled that according to Article 6.4 "[…] [t]he Member or Members to whom serious damage, or actual threat thereof, referred to in paragraphs 2 and 3 [of Article 6], is attributed, shall be determined on the basis of a sharp and substantial increase in imports, actual or imminent, from such a Member or Members individually, and on the basis of the level of imports as compared with imports from other

[211] For details, see G/TMB/R/97, paragraphs 19 to 30.

sources, market share, and import and domestic prices at a comparable stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. [...]". [footnote omitted] It was noted that imports from Chinese Taipei showed a sharp and substantial increase during the period analysed and had continued to increase during the reference period established pursuant to Article 6.8. During that period, Chinese Taipei became the major foreign supplier to the Brazilian market, capturing a significant portion of it. Also, the evolution of the average price level of the products imported from Chinese Taipei relative to the average price level of the Brazilian domestic production was a clear indication that the domestic producers had not been able to compete with the significantly lower-priced imports originating from Chinese Taipei. The TMB, having considered all the relevant facts, agreed with Brazil that the serious damage caused to its domestic industry could be attributed, *inter alia*, to imports from Chinese Taipei. The TMB reviewed the main elements of the agreement reached between Brazil and Chinese Taipei and found that the agreed restraint would be implemented fully in accordance with the requirements of Article 6.13. As to the administrative procedures to be applied for the implementation and control of the restraint, the TMB, *inter alia*, noted that they corresponded largely to the provisions of administrative arrangements referred to in Article 2.17. The TMB, bearing in mind the conclusions outlined above determined that the agreement reached between Brazil and Chinese Taipei was justified in accordance with the provisions of Article 6.

(b) Brazil/Korea: imports by Brazil of certain synthetic woven fabrics from Korea.

434. At the end of October 2002 Brazil requested consultations with Korea pursuant to Article 6.7. Consultations produced agreement that the situation called for a restraint, for two consecutive quota periods, from 27 January 2003 to 31 December 2004, on imports of other woven fabrics, containing 85 per cent or more by weight of textured polyester filaments, dyed, without rubber filaments (HS/NCM Code 5407.5210) and of other woven fabrics, containing 85 per cent or more by weight of non-textured polyester filaments (HS/NCM Code 5407.6100). The agreed restraint was notified by Brazil pursuant to Article 6.9, and reviewed by the TMB at its meetings in February and March 2003 since, in the course of its review, the TMB, in order to be well-placed to assess whether the products in question were being imported in such increased quantities as to cause serious damage to the Brazilian industry producing like and/or directly competitive products, had decided to seek additional information from Brazil and to revert to its review at its subsequent meeting.

435. The TMB observed that the request for consultations pursuant to Article 6.7 had been addressed by Brazil to Korea on the same date as a similar request addressed to Chinese Taipei, and that it covered the same two products. Moreover, the TMB observed that the specific and relevant factual information provided to Korea together with the request for consultations pursuant to Article 6.7, concerning developments in total imports and the factors referred to in Article 6.3, on which Brazil had based the determination of the existence of serious damage, was the same as that provided to Chinese Taipei.[212] Therefore, the TMB considered that its examination of the information provided in that case and its finding that Brazil had successfully demonstrated, pursuant to the provisions of Articles 6.2 and 6.3, that the two products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products applied also to the case of the restraint agreed between Brazil and Korea.

436. As to the attribution of the serious damage to imports from Korea, the TMB noted that imports from Korea showed a sharp and substantial increase during the period analysed, Korea becoming the second main foreign supplier to the Brazilian market with more than one third of overall imports, holding during the last period considered a significant portion of the Brazilian market. The ratio of the average price level of products imported from Korea to the average price level of domestic production, examined at a comparable stage of commercial transaction, and its evolution from

[212] See paragraphs 429 to 433 above.

September 1998 to August 2001, was a clear indication that the domestic producers had been unable to compete with the significantly lower-priced imports originating from Korea. The TMB, having considered all the relevant facts, agreed with Brazil that the serious damage caused to its domestic industry could be attributed, *inter alia*, to imports from Korea. The TMB reviewed the main elements of the agreement reached between Brazil and Korea and found that the agreed restraint would be implemented fully in accordance with the requirements of Article 6.13. As to the administrative procedures to be applied for the implementation and control of the restraint, the TMB, *inter alia*, noted that they corresponded largely to the provisions of administrative arrangements referred to in Article 2.17. The TMB, bearing in mind the conclusions outlined above determined that the agreement reached between Brazil and Korea was justified in accordance with the provisions of Article 6.

2. Follow-up to the TMB's recommendation made pursuant to Article 8.10: Poland/Romania – imports of acrylic/modacrylic staple yarn, pure or mixed with wool or fine animal hair (HS numbers 5509.31, 5509.32 and 5509.61) from Romania

437. As already reported in detail[213], at its meeting of September 2001 the TMB examined the safeguard measure introduced by Poland pursuant to Article 6.10 on imports from Romania. As a result of its detailed examination, the TMB concluded that Poland had not demonstrated that the yarns subject to its safeguard measure were being imported into its territory in the reference period in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. It recommended, therefore, that Poland rescind the transitional safeguard measure introduced on imports of acrylic/modacrylic staple yarn, pure or mixed with wool or fine animal hair from Romania.

438. Subsequently, Poland stated with reference to Article 8.10 that it considered itself unable to conform with the recommendation made by the TMB and provided the reasons for it. The TMB examined this communication at its meeting in November 2001.[214] Having given thorough consideration to the reasons presented by Poland for its inability to conform with the TMB's recommendation, the TMB concluded that these reasons did not lead it to change the conclusion and recommendation arrived at by it during the examination of the transitional safeguard measure in question pursuant to Article 6.10. The TMB recommended, therefore, that Poland reconsider its position and that the safeguard measure introduced on the imports from Romania of acrylic/modacrylic staple yarn, pure or mixed with wool or fine animal hair, be rescinded forthwith.

439. At its December 2001 meeting, the TMB, bearing in mind that Article 8.9 of the ATC states that " [t]he Members shall endeavour to accept in full the recommendations of the TMB, which shall exercise proper surveillance of the implementation of such recommendations", and in view of the fact that the TMB had received no information from Poland as to the implementation of this recommendation, decided to request such information from Poland.[215]

440. At its subsequent meeting in January 2002, the TMB considered a communication received from Poland following this request for information. This communication stated that, following the recommendation by the TMB, "Poland is intending to implement [the] TMB recommendation […] relating to [the] transitional safeguard measure introduced by Poland on imports of staple yarn from Romania. This measure will be rescinded on 1 March 2002". The TMB recalled that it had examined this safeguard measure in September 2001 pursuant to Article 6.10 and, that subsequently, in November 2001, it had considered the reasons given by Poland for considering itself unable to conform with the recommendation the TMB had made. Detailed information, together with the TMB's recommendation had been provided to WTO Members with regard to the latter examination on

[213] See paragraphs 26 to 29 above.
[214] See paragraphs 32 to 37 above.
[215] See also paragraph 38 above.

23 November 2001. In taking note of the communication of Poland, the TMB observed that, though Article 8 contained no specific deadline for the implementation by the Member(s) concerned of the TMB's recommendations, the measure would have been in place for more than seven months.

3. The TMB's comments with respect to the application of the transitional safeguard mechanism during the third stage of the integration process

441. In order to assess the use of the provisions of the transitional safeguard mechanism during the third stage of the integration process, the facts that characterized developments in this area during the first two stages should be briefly recalled, as a background. During the first stage (1 January 1995 to 31 December 1997), two Members invoked the provisions of Article 6, involving 34 cases in total: United States (27 cases) (of which 24 in 1995); and Brazil (seven cases). During the second stage of the integration process, recourse to the provisions of Article 6 was made in 29 cases. Four Members invoked these provisions: Argentina (17 cases), Colombia (9 cases), Poland (2 cases) and the United States (1 case). In the second comprehensive report, the TMB had observed that "developments during Stage 2 and, in particular, the substantial decline in the use of the provisions of Article 6 as from the beginning of 2000, would correspond to the requirement defined in Article 6.1, according to which the transitional safeguard should be applied as sparingly as possible".[216] In the report of its major review of the implementation of the Agreement on Textiles and Clothing during the second stage of the integration process, the Council for Trade in Goods noted "the declining trend with respect to the application of the transitional safeguard mechanism during the second stage; while recognizing that Members may resort to the safeguard provisions of the ATC during its final years, [the Council] called upon all Members to apply it as sparingly as possible, consistently with the provisions of Article 6 and the effective implementation of the integration process under the Agreement."

442. During the third stage of the integration process, as described in paragraphs 429 to 436 above, only two recourses to the provisions of Article 6 have been made, both by Brazil in 2002. In these two instances, the respective restraint measures were agreed between the Members concerned and Brazil and the TMB, after its review, determined that, in both cases, the agreements were justified in accordance with the provisions of Article 6. The fact that only two recourses to the provisions of Article 6 were made in 2002, none in 2003 and, so far, in 2004, confirmed the trend already observed by the TMB of a substantial decline in the use of the transitional safeguard mechanism as from the beginning of the year 2000 as well as the noticeable deceleration of the recourse to the provisions of Article 6 started during the second stage of the implementation process.[217] As to the possible reasons and explanations for this trend, the TMB was of the view that the reasons put forward in its second comprehensive report, i.e., *inter alia*, the disciplines embodied in and the control exercised by the WTO system, the jurisprudence set by the respective panel and Appellate Body reports, which provided detailed guidelines to Members and established appropriate standards on which the TMB has been able to rely in improving the efficiency and transparency of TMB proceedings and reports, remained valid.[218] The TMB also observed that the developments with respect to the recourse by Members to the provisions of Article 6 during Stage 3 corresponded to a large extent to the call to Members made by the CTG in July 2002, referred to in paragraph 441 above.

443. It should also be observed that the TMB continued to make the utmost efforts to exercise proper surveillance of the implementation of its recommendations, as was the case with respect to the recommendations made by the TMB to Poland at the end of Stage 2.[219]

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[216] See G/L/459, paragraph 687.
[217] See G/L/459, paragraph 238.
[218] Ibid., paragraphs 239 and 240.
[219] See paragraphs 439 and 440 above.

444. In conclusion, the TMB observes that the fact that the recourse to the provisions of Article 6 has decreased substantially and that, in the past two years, Article 6 has not been invoked at all, should facilitate the full integration of the textiles and clothing sector into GATT 1994 as stipulated in Article 9 of the ATC.

D. ISSUES RELATED TO THE ADMINISTRATION AND IMPLEMENTATION OF RESTRICTIONS. IMPLEMENTATION OF THE PROVISIONS OF ARTICLES 4 AND 5

1. Implementation of the provisions of Article 4

(a) Administration of restrictions (Article 4.1)

445. Article 4.1 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".

446. Canada, the European Communities and the United States had notified during the first and second stages of the integration process administrative arrangements with reference to Article 2.17 which, *inter alia*, entrust the exporting Members with the administration of restrictions. The TMB had noted that some of the arrangements concluded by one importing Member (United States) provided that Member with the possibility of making adjustments to the levels of existing restrictions. The TMB expected 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.[220]

447. During the third stage of the integration process, the TMB received and examined the notifications of administrative arrangements concluded between Canada, the European Communities and the United States, and China and Chinese Taipei, respectively.[221] Under these administrative arrangements the right of the exporting Members concerned to administer the restrictions still in place is fully preserved. Apart from the notification of these new administrative arrangements, the TMB has not received any specific notification or communication directly related to the implementation of the provisions of Article 4.1.

(b) Changes in the sense of Article 4.2 in the implementation or administration of restrictions applied under the ATC and related actions under Article 4.4

448. 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".

449. As previously noted by the TMB[222], the administrative arrangements agreed during the first stage of the integration process between the European Communities and the respective exporting Members included 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 Communities or any decision resulting in a modification of classification of products shall not have the effect of reducing any quantitative limit (maintained

[220] See G/L/459, paragraphs 382 and 383.
[221] See paragraphs 264 to 306 above.
[222] See G/L/459, paragraph 385.

under the ATC). The administrative arrangements agreed between the European Communities and China and Chinese Taipei, respectively, notified during the third stage of the implementation process, also contain similar provisions. The administrative arrangements concluded by Canada and the United States during the previous stages of integration did not contain such provisions. This is also true for the administrative arrangements agreed between these two Members and China and Chinese Taipei, respectively. The absence of such explicit dispositions in the administrative arrangements notwithstanding, in case of changes, as specified in Article 4.2, the provisions of Articles 4.2 and 4.4 apply.

450. 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 must 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.

451. The administrative arrangements concluded by the European Communities foresee consultations with the exporting Members with a view to honouring the obligations detailed in paragraph 450 above. The administrative arrangements concluded by Canada and the United States do not contain specific consultation provisions for similar types of cases. This also applies to the administrative arrangements concluded by these Members with China and Chinese Taipei, respectively.

452. Developments regarding the implementation of Articles 4.2 and 4.4 during the period covered by the first and second comprehensive reports, in particular as far as changes in the rules of origin applied by the United States are concerned, are summarized in the second comprehensive report.[223] During the third stage of the implementation process, no specific matter has been notified to the TMB with reference to the implementation of the provisions of Article 4.2.

453. Although this issue was not referred to the TMB, the Body is aware that on 11 January 2002, India requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 and Article 7 of the Agreement on Rules of Origin regarding the rules of origin for textiles and apparel products set out in Section 334 of the Uruguay Round Agreements Act, Section 405 of the Trade and Development Act of 2000 and the customs regulations implementing these provisions. Section 334 of the Uruguay Round Agreements Act changed the rules of origin applicable to textile and apparel products as from 1 July 1996 and, according to the claims of India, the main objective of these changes was to protect the United States' textiles and clothing industry against import competition. India recalled that the European Communities had considered the above changes to be inconsistent with the United States' obligations under the Agreement on Rules of Origin and other WTO agreements, and had initiated dispute settlement proceedings against the United States. The European Communities had subsequently withdrawn the complaint when the United States had agreed to introduce legislation restoring the previous rules in respect of certain products. However, the legislation actually introduced did not satisfy the EC, and it therefore initiated new dispute settlement proceedings. This dispute was settled through a *procès-verbal* according to which the United States agreed to introduce legislation modifying the Section 334 rules of origin for certain products. Section 405 of the Trade and Development Act of 2000 gave effect to this *procès-verbal.*[224] The changes introduced in 1996 and 2000 resulted, according to India, in extraordinarily complex rules under which the criteria that confer origin vary between similar products and

[223] See G/L/459, paragraphs 388 to 406.
[224] See also G/L/459, paragraphs 400 to 402.

processing operations. The structure of the changes, the circumstances under which they were adopted and their effect on the conditions of competition for textiles and apparel products suggested, according to India, that they serve trade policy purposes. India therefore questioned the compatibility of these changes with paragraphs (b), (c), (d) and (e) of Article 2 of the Agreement on Rules of Origin, according to which rules of origin shall not be used as instruments to pursue trade objectives; shall not pose unduly strict requirements; shall not themselves create restrictive, distorting or disruptive effects on international trade; shall not be discriminatory; and shall be administered in a consistent, uniform, impartial and reasonable manner.

454. In communications dated January 2002 addressed to the Dispute Settlement Body and to the two Members concerned, the European Communities and Bangladesh notified that they wished to join in these consultations.

455. Consultations were held but failed to settle the dispute. India, therefore, requested the establishment of a panel on 7 May 2002. A revised request was communicated by India to the Dispute Settlement Body on 3 June 2002. The panel was established by the Dispute Settlement Body on 24 June 2002. Bangladesh, China, the European Communities, Pakistan and the Philippines reserved their third party rights to participate in the panel's proceedings. The panel issued its report on 20 June 2003. It concluded that India had failed to establish that (a) Section 334 of the Uruguay Round Agreements Act of the United States is inconsistent with Articles 2(b) or 2(c) of the Rules of Origin Agreement; (b) Section 405 of the Trade and Development Act of the United States is inconsistent with Articles 2(b), 2(c) or 2(d) of the Rules of Origin Agreement; and (c) the US customs regulations in question are inconsistent with Articles 2(b), 2(c) or 2(d) of the Rules of Origin Agreement. In the light of its conclusions, the panel made no recommendations under Article 19.1 of the DSU.[225] The panel report was adopted by the Dispute Settlement Body on 21 July 2003, which at the same time took note of the statements made on this occasion on the report by China, India, the Philippines and the United States.[226]

456. In his statement in the Dispute Settlement Body, the representative of the United States stated, *inter alia*, that his country welcomed the panel's findings that the US rules of origin at issue in the dispute were not inconsistent with its obligations under the Agreement on Rules of Origin. As the United States maintained from the outset, the US rules were not discriminatory and did not distort or disrupt international trade. The representative of India said, *inter alia*, that his country was disappointed with the panel report which India found to be fundamentally flawed for several reasons. First, it had adopted an interpretation of Article 2 of the Agreement on Rules of Origin which acknowledged exclusively the discretion of a Member to determine the use of its rules of origin, without drawing the line at an abuse of rules of origin. Second, the panel had adopted an interpretation of the non-discrimination provision of Article 2(d) of the Agreement on Rules of Origin that narrowed the scope of this provision as compared to other non-discrimination provisions in the WTO Agreement, in particular Article 1 of GATT 1994. Third, it had avoided making clear legal interpretations by couching its interpretations *in arguendo* and then making findings of fact based on these interpretations. Finally, the panel had failed to seek the information from India that it considered so necessary for the proper evaluation of this dispute. Given the failure of the panel to accomplish these tasks, it did not appear to India that the panel report formed the proper basis for an appeal.

(c) Integration of part of a restriction (Article 4.3) and related actions under Article 4.4

457. Article 4.3 provides that "[i]f 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

[225] See WT/DS243/R.
[226] See WT/DSB/M/153, paragraphs 82 to 98.

under this Agreement." When changes mentioned in this Article are necessary, the provisions of Article 4.4 apply.[227]

458. During the first stage of the integration process, no part of a restriction was integrated and, therefore, the provisions of Article 4.3 were not invoked. As a result of the Stage 2 implementation, in certain cases, parts of restrictions became integrated and corresponding changes in the levels of the respective remaining restrictions were implemented. This was the case, in particular, with the United States, which integrated a part of a category subject to specific restraint and also a number of other categories which had been falling under group or aggregate limits. In all these cases, the United States implemented downward adjustments in the levels of the respective restraints or limits. Canada made similar adjustments in two cases. It should be noted, however, that no matter was referred to the TMB with specific reference to the provisions of Articles 4.3 and 4.4 during the second stage of the integration process.

459. It should be recalled that in a communication addressed to the TMB in the context of its preparation of the second comprehensive report, ITCB members requested the TMB to comment on the methodology employed by the restraining Members in adjusting the levels of restraints as a result of partial integration during Stage 2 and also on the outlook for Stage 3 in this regard.[228]

460. In its related comments, the Body stated, *inter alia*, that in its reading Article 4.3 allows for such adjustments (i.e. downward adjustments) though these are not mandatory. However, if such adjustments are made, "any change in the level of that restriction shall not upset the balance of rights and obligations between the Members concerned under [the ATC]". In implementing such changes, the provisions of Article 4.4 shall also apply. Therefore, if a Member considers that appropriate information has not been received and no consultations have taken place prior or immediately after the implementation of the changes, or that such consultations did not result in a mutually satisfactory solution, any Member involved may refer the matter to the TMB for recommendations. The TMB recalled that no such matter had been referred to it by any Member.[229]

461. Also, in its second comprehensive report, the TMB recommended to the CTG that the Council "recall that if a product which constitutes only part of a restriction were to be notified for integration during Stage 3, any adjustment to be implemented in the level of the respective restrictions, shall not upset the balance of rights and obligations between the Members concerned under the ATC, in compliance with the provisions of Article 4.3".[230]

462. As a result of the implementation of the third stage of the integration process, in several instances a part or parts of a category (or of merged categories) subject to specific restraint and also a number of other categories falling under group or aggregate limits were integrated. This applied to Canada and the United States, while the European Communities did not integrate parts of restrictions. In the case of Canada, the TMB took note of a statement by Canada that when a product or a category would be integrated that represented only part of a restrained category, merged category or sub-category, the level for the respective remaining restraints (category, merged category or sub-category) would not be reduced to reflect the removal of these products from the restriction.[231] In the case of the United States, the TMB noted the US' statement that the United States "will be in contact with [its] textiles agreement partners during the course of this year [i.e. 2001], concerning the effects of integration in the year 2002 on specific, group and aggregate limits. Adjustment to limits will be based on trade that has occurred in the products to be integrated, and [the United States'] agreements partners will be given the opportunity to consult with [the United States] on this issue". In this regard,

[227] See paragraph 450 above.
[228] See G/L/459, paragraphs 410 and 422.
[229] *Idem*, paragraph 425.
[230] See G/L/459, paragraph 682.
[231] See G/L/459, paragraph 82.

the TMB recalled that, in conformity with the provisions of Article 4, any change in the level of such restrictions shall not adversely affect the access available to a Member and upset the balance of rights and obligations of the Members concerned under the ATC.[232] In reiterating this statement in the second comprehensive report, the TMB expressed the expectation that the Members concerned will make full use of their consultations in conformity with the provisions of Articles 4.3 and 4.4. In the view of the TMB, prior to its implementation, any such adjustment should be mutually agreed between the United States and its trading partners in the framework of the consultations envisaged in Article 4.4.[233] Subsequent to this statement, no notification has been made to the TMB pursuant to Article 4.4 with reference to the implementation by the United States of such adjustments.

463. In the context of its examination of the notification received pursuant to Article 2.1 from the United States following the accession of China to the WTO, including observations made by China pursuant to Article 2.2 on this notification, the TMB examined, *inter alia*, the question of the downward adjustment of quota levels for partially integrated products.[234] It noted in this respect that China had stated that "the base levels for some Specific Limits and certain Group Limits have been substantially reduced due to partial integration. For example, the base level for Group III was reduced by 81.74 per cent. Such measures adversely affect China's export of non-integrated products covered therein". The TMB also noted that the United States had stated that "[a]s provided for in Article 4.3, the quotas that were affected by partial integration have been reduced to reflect the more limited product coverage. As with other WTO Members, the United States applied a standard methodology for adjusting specific and group limits to reflect partially integrated products. The US practice is to adjust group and specific limits affected by partial integration by reducing them by the average amount of volume of trade in the integrated product for the previous two calendar years, specifically, 1999 and 2000 in this instance." The TMB noted, in this regard, that the level of the quantitative restrictions notified had remained unchanged until 31 December 2001, and that the downward adjustments of quotas had taken place apparently on 1 January 2002 with the implementation of the provisions of Article 2.8(b) by the United States. Therefore, China's observation was not directly related to the restraint levels taken over from the pre-ATC regime, as notified by the United States pursuant to Article 2.1, but rather a matter to be dealt with pursuant to the provisions of Article 4. The TMB noted in this regard that Article 4.3 states that "[i]f 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." Therefore, the ATC allowed for the downward adjustment of quotas as a result of the partial integration of products, provided such adjustments did not upset the balance of rights and obligations between the Members concerned under the ATC. For such cases, Article 4.4 states that "[…] Members agree that the Member initiating such changes shall inform and, wherever possible, initiate consultations with the affected Member or Members prior to the implementation of such changes, with a view to reaching a mutually acceptable solution regarding appropriate and equitable adjustment. Members further agree that where consultation prior to implementation is not feasible, the Member initiating such changes will, at the request of the affected Member, consult, within 60 days if possible, with the Members concerned with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments. If a mutually satisfactory solution is not reached, any Member involved may refer the matter to the TMB for recommendations as provided in Article 8 […]". The TMB observed in this regard that China had raised this issue in a general way, by referring to "some specific limits" and "certain group limits" and that the example provided by it could not be assessed further in view of the lack of further relevant information. The TMB had not received sufficient specific information from China, nor indications on the possible consultations between the Members concerned referred to in Article 4.4, that would have enabled it to examine, in case of lack of a mutually satisfactory solution in the consultations regarding specific cases, whether or not the balance of rights and obligations between the Members

[232] See G/L/459, paragraph 85.
[233] See G/L/459, paragraph 429.
[234] See paragraph 172 above.

concerned under this Agreement had been upset and, if so, whether the adjustments implemented had been appropriate and equitable; nor had China referred any related specific matter to the TMB for recommendation as provided in Article 8.

464. As was the case during the second stage, no matter has been referred to the TMB with specific reference to the provisions of Articles 4.3 and 4.4 during the third stage of the integration process.

(d) Ministerial Decision on Implementation-Related Issues and Concerns

465. The Decision adopted by the Ministerial Conference in Doha states, *inter alia*, the following: "The Ministerial Conference [...] agrees [...] that without prejudice to their rights and obligations, Members shall notify any changes in their rules of origin concerning products falling under the coverage of the [ATC] to the Committee on Rules of Origin which may decide to examine them."[235]

466. The TMB is not aware of any relevant subsequent notification addressed to the Committee on Rules of Origin.

(e) Views and comments of WTO Members in response to the TMB's request for information

467. In their response to the TMB's request for information or comments in the context of the preparation of the present report, ITCB members stated, *inter alia*, that "the US rules of origin relating to textile and clothing products were substantially changed. These changes led to significant effects on trade. In effecting these changes, the United States enlarged the coverage of certain cotton made-up products. Thus, it is now specified that these products would be deemed to be that of cotton even if they contained as little as 16 percent of cotton by weight. (Prior to this, these products were considered to be that of cotton if they contained cotton as their chief weight). Notwithstanding that a dispute panel ruled that the complainant in that case did not succeed in establishing that the changes had been effected in violation of obligations under the Agreement on Rules of Origin, it is submitted that the change in classification of cotton products enlarged the scope and incidence of restrictions on these products to the disadvantage of the exporting Members concerned."

468. The same submission went on to state that "[s]imilarly there have been instances of transfer of particular products from relatively unimportant categories (in which quota utilization rates were low) to high-demand tight-quota categories, thereby increasing the restrictiveness of relevant quotas. The TMB may wish to invite the restraining Members for information on such changes so as to enable it to include an assessment of their effect on the utilisation of access opportunities during the stage under review."

469. In its submission to the TMB in response to the Body's request for information or comments in the context of the preparation of the present report, Turkey stated that "[w]ith regard to Article 4 of the ATC, the Turkish Council of Ministers has taken the necessary measures and issued the required regulations (Council of Ministers Decision No. 95/6815) to protect the interest of the supplier countries within the context of the changes in the categorization of textile and clothing products." In a subsequent communication, Turkey indicated that "as a result of the obligations stemming from the customs union with the EU, Turkey implemented, in very few instances, minor changes in the categorization of textile and clothing products in parallel with the EU. However, according to the statistics available to Turkey, these measures have had no effect whatsoever on any of the Members in terms of market access to Turkey. These measures were taken according to Article 4 of the ATC."

470. In response to the TMB's request for information or comments in the context of the preparation of the present report, the European Communities stated that with respect to "India's

[235] Paragraph 4.3 of the Decision adopted by the Ministerial Conference. See WT/MIN(01)/17.

submission on behalf of the ITCB and concerning product classification[236] [footnote added], implying transfer to more sensitive categories and therefore increasing the level of restriction does not seem to concern the Community's quota management. If that is not the case, [the EC] would kindly ask for some concrete examples or evidence of such practices."

471. In its submission to the TMB in response to the Body's request for information or comments in the context of the preparation of the present report, the United States stated in response to the issues raised by the ITCB members[237], that "[t]he United States is surprised that India would again raise the changes to US rules of origin made in 1995. First, despite years of complaining about this issue, when India had the opportunity to fully explain its position before a WTO dispute settlement panel, it was unable to demonstrate that these changes had any restrictive, distorting, or disruptive effect on trade. Second, these changes were made in 1995, yet India and the other ITCB members continue to complain about them in 2004, even after a dispute settlement panel confirmed their consistency with WTO requirements. The United States declines to justify these changes yet again. However, to clarify one point made by India, we note that the changes to US rules of origin, codified in section 102.21 of the US Customs regulations, do not govern the classification of products. Classification is made according to the Harmonized System and certain administrative arrangements notified pursuant to Article 2.17 and is independent from any origin determination."

472. In a further submission, ITCB members stated, *inter alia*, as follows:

- "[A]s to widening of the scope of certain cotton made-up products pursuant to rules of origin changes: It may be recalled that on the occasion of the second major review, we offered a detailed account of changes introduced by the United States in its origin rules pertaining to textile and clothing products, especially those pursuant to Section 405 of its Trade and Development Act of 2000 enacted on 18 May 2000. Reference in this regard is invited to Annexes 6 and 7 of document G/TMB/N/403/Add.1, which reproduced the elaboration of our submission relating to rules of origin changes. [...]

- We wish to reiterate that no doubt a dispute panel ruled on the basis of a narrow legal consideration that the complainant had not succeeded in establishing that the changes violated the US's obligations under the Agreement on Rules of Origin. However, the issue that we seek to bring to the TMB's attention in connection with its present major review is specifically the one relating to the widening of the coverage of some cotton products in the context of the ATC.

- In this connection, it may be noted that the US rules of origin changes altered the definition of some made-up products so that these are now deemed to be that of cotton even if they contain as little as 16 per cent of cotton as their component by weight. Prior to this change, these same products could be considered as those of cotton only if they contained cotton as their chief weight. Indeed this was the disposition under the pre-ATC bilateral agreements which were the basis of restrictions carried over from the MFA and notified to the TMB under Article 2 of the ATC.

- It is apparent that the above change in the definition of these products led to more exports being classified and counted as those of cotton than was the case previously. Thus, for example, products which were exported under US Category 666 (Other man-made fibre furnishings) now came to be classified and counted under Categories 360, 361, 362 (cotton pillowcases, sheets and bedspreads respectively), etc., in which

[236] See paragraph 468 above.
[237] See paragraphs 467 and 468 above.

a number of exporting Members had high rates of quota utilization. Thus, the change resulted in effective diminution of access (or, to put it differently, in enlarging the scope and incidence of relevant restrictions) in violation of Article 2.4 of the ATC, and causing disruption to established trade and upsetting the balance of rights and obligations in the sense of Article 4.2."

473. Also, as regards the question of the changes in the classification of certain product categories, ITCB members stated the following:

- "[T]here have been instances of changes in the classification of certain product categories. In some cases, these changes involved transfer of particular products from one category to another and/or from non-category to category products. These changes have generally been effected unilaterally, without any consultation with or information to the affected exporting Members within the meaning of, and as required, under Article 4 of the ATC.

- Aside from the above, the changes firstly created disruptive effects on trade, upsetting individual business plans and proper administration and utilization of quota access. Secondly, in instances in which products were reclassified to high-demand tight-quota categories, these led to increasing the restrictiveness of relevant quotas.

- We appreciate that the TMB has requested information from the restraining Members about changes in classifications. We are confident that comprehensive information by these Members will facilitate the TMB's consideration of the issue and establish the point that we seek to bring to its attention.

- In this connection, the Body may also like to recall that in our submission on the occasion of the second major review, [the ITCB members] provided information with respect to changes effected by one restraining Member. Reference in this regard is invited to Annex 8 in document G/TMB/N/403/Add.1 quoted [...] above. [...]

- In addition, some further instances of changes by one Member, the United States, since the year 2002 coming to our notice are presented in a table attached to this letter[238]. It may be noted that in several cases particular products were transferred from Categories 352, 359 and 459 (Underwear and other apparel) to some other categories. Included in the categories to which products were thus shifted were tight-quota Categories 341 (Women and girls' shirts and blouses), 634 (Men's and boys' coats), etc. What is more, some products that were not previously treated as belonging to any ATC category have now been classified to ATC categories. Thus, MMF carrying cases, polyester curtain tie-backs have now been included in Categories 670 and 666 respectively."

(f) Further comments and observations by the TMB

474. The TMB recalls that in its second comprehensive report, commenting on the implementation by the United States of changes in the rules of origin it applied to imports of textiles and clothing products, and having noted, *inter alia*, the serious concerns expressed by the ITCB members indicating that several Members continued to perceive the changes implemented in the US rules of origin as having an adverse effect on their trading interests and their rights under the ATC, stated that "it would be appropriate for Members not to implement important changes in their respective rules of

[238] See G/TMB/N/474/Add.1.

origin during the remaining period of ATC implementation."[239] The Body observes in this regard that during the third stage of the integration process no further changes have been implemented by a Member to its applied non-preferential rules of origin in the textiles and clothing sector. The TMB also observes that whilst the panel set up at the request of India to examine the US changes concluded that India had failed to establish its case and, consequently, made no recommendation under Article 19.1 of the DSU, it appeared from the statements made by several Members[240] that they continued to perceive that the changes implemented in the US rules of origin had an adverse effect on their trading interests and their rights under the ATC. This assessment is reflected again in the views expressed by ITCB members, reproduced in paragraph 467 above. The concerns raised this time focused on the impact of changes in the rules of origin on the resulting changes in the classification of cotton products, with the effect that in the context of ATC implementation the coverage of some cotton products has been widened and more exports have been classified and counted as those of cotton than was the case prior to the changes in the US rules of origin.

475. The TMB also observes that in its response the United States, apart from "declin[ing] to justify [the rules of origin] changes", wished to clarify that "the changes to US rules of origin [...] do not govern the classification of products. Classification is made according to the Harmonized System and certain administrative arrangements notified pursuant to Article 2.17 [...]."

476. Concerning the issues raised by ITCB members regarding changes in product classification other than those attributed by the same members to the effect of changes in the rules of origin, in some cases involving transfer of particular products from one category to another and/or from "non-category" to category products, the TMB notes that, as also suggested by ITCB members, it has requested specific information also in this regard from the Members maintaining such restrictions. It is noted that, in response, the European Communities stated that such possible measures "[do] not seem to concern the Community's quota management." However, it appears from the response provided by Turkey that "Turkey implemented in very few instances, minor changes in categorization of textiles and clothing products in parallel with the EU", though, according to Turkey, such measures have not affected market access opportunities to the Turkish market. In light of this information, the TMB assumes that the minor changes implemented by Turkey were effected as a result of adjustments made necessary by the implementation of the Customs Union Agreement with the European Communities. It should be also noted that the examples provided by ITCB members in their communication do not concern the European Communities or Turkey. Furthermore, it is assumed that the response of the United States as reflected in paragraph 475 above also applies to the cases involving transfer from one category to another and similar measures.

477. The TMB notes the concerns raised and detailed explanations provided by ITCB members with respect to certain changes implemented in product classification. It is argued that some of these changes could adversely affect the access available to the Members concerned. The TMB has neither sufficient information at its disposal, nor the necessary technical experience, that would enable it to take a position on the issue of whether some of the changes reported can be attributed, or not, to the effect of the changes in the US rules of origin. The TMB observes, however, that the introduction of changes in the rules of origin and also in the categorization of textile and clothing products should be governed by the same provisions of the ATC, i.e. Articles 4.2 and 4.4. This applies also to the impact of changes related to the Harmonized System. Any such changes should conform to the requirements specified in Article 4.2, i.e. they "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".

478. In light of the above, while noting the concerns expressed in this regard, the TMB observes that none of the Members has referred any such specific matter to the TMB with reference to the

[239] See G/L/459, paragraphs 415 to 418.
[240] See WT/DSB/M/153, paragraphs 84 to 97.

provisions of Article 4.4, which clearly stipulate that "[i]f a mutually satisfactory solution is not reached [in the consultations foreseen in Article 4.4], any Member involved may refer the matter to the TMB for recommendations as provided in Article 8." Also, in some cases, as referred to by the United States, the Members concerned could have had recourse to the respective procedures laid down in the administrative arrangements notified under Article 2.17 to the extent that such procedures were designed to facilitate the implementation of the provisions of Articles 4.2 and 4.4.

479. As regards the question of the downward adjustment of quota levels for partially integrated products made by the United States, the TMB recalls once again that in its second comprehensive report, adopted five months prior to the implementation of possible adjustments resulting from the third stage of the integration process, it expressed, *inter alia*, the expectation that "the Members concerned will make full use of their consultations in conformity with the provisions of Articles 4.3 and 4.4. In the view of the TMB, prior to its implementation, any such adjustment should be mutually agreed between the United States and its trading partners in the framework of the consultations envisaged in Article 4.4."[241] The TMB observes in this respect that no Member, including those Members which acceded to the WTO since the TMB had adopted its comprehensive report on the implementation of the ATC during the second stage of the integration process, has referred such matter to the TMB with a view to indicating that no mutually satisfactory solution could be reached in the consultations envisaged in Article 4.4 and, therefore, referring the issue to the TMB for recommendation as provided for in Article 8.

2. Implementation of the provisions of Article 5

480. 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:

- 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;

- agreeing to take necessary action, consistent with Members' domestic laws and procedures, to prevent, to investigate, and, where appropriate, to take legal and/or administrative action against circumvention practices within their territory;

- committing to cooperate fully, consistent with Members' domestic laws and procedures, to establish the relevant facts in instances of circumvention or alleged circumvention;

- 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;

- 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

[241] See G/L/459, paragraph 429.

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

(a) Issues relevant in the context of the implementation of Article 5: examination by the TMB of the provisions related to circumvention contained in certain administrative arrangements notified under Article 2.17, as reported in the first and second comprehensive reports of the TMB

481. As noted in the first two comprehensive reports of the TMB[242], the administrative arrangements concluded respectively by the European Communities and the United States with several Members include provisions related to circumvention. In the context of its review of such arrangements, in light of the explanations received, the TMB noted that the European Communities 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 Communities pursuant to Article 2.1. Also, 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 those included in the administrative arrangements was not intended to constitute a derogation from the applicable provisions of the ATC. In light of this and as an overall conclusion of its review of the administrative arrangements notified by the European Communities, 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.

482. 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 damaged a country's legitimate trade by making it impossible to administer effectively its Article 2.1 quotas. The United States and the Members concerned had 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.

483. 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 contained detailed descriptions of the rules and procedures to be followed. The TMB noted, *inter alia*, that Article 5.4 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.

[242] See G/L/179, paragraphs 215 to 221 and G/L/459, paragraphs 298 to 304 and 307 to 309.

(b) Developments during the third stage of the integration process

484. During the third stage of the integration process, no issue has been referred to the TMB with specific reference to the provisions of Article 5. During that Stage, however, the TMB has reviewed six administrative arrangements concluded between Canada, the European Communities and the United States and, respectively, China and Chinese Taipei which contain, *inter alia*, provisions dealing with circumvention either explicitly (European Communities, United States) or indirectly (Canada). These provisions and their examination by the TMB are reported in detail in Part Three, Section II of the present report[243]. It is noteworthy that the respective provisions of the administrative arrangements concluded between the European Communities and, respectively, China and Chinese Taipei contain, *inter alia*, explicit references to the provisions of Article 5. The same applies to the administrative arrangements agreed between China and the United States, which also clearly spell out that "[...] in the event of a conflict between [the circumvention provisions of the administrative arrangements] and Article 5 of the ATC that impairs the operation of the ATC, the ATC shall prevail". The administrative arrangements between Chinese Taipei and the United States also incorporate a few elements of the language of Article 5. In taking note of the respective administrative arrangements notified, the TMB expressed its expectation that all the provisions of these arrangements (including those related to circumvention) would be implemented by the Members concerned in full compliance with the relevant provisions of the ATC.

(c) Follow-up of the TMB's examination of the communications made by Pakistan and the United States regarding a Memorandum of Understanding reached between the two Members

485. As reported in the second comprehensive report of the TMB[244], the Body had considered at the end of Stage 1 and during Stage 2, two communications made by Pakistan and the United States, respectively, of a Memorandum of Understanding (MOU) reached between the two Members in March 1996. The MOU notified was intended to provide a mutually satisfactory solution to a dispute between the two parties concerning the debits made by the United States in 1995 to Pakistan's quota for US category 361 products (bedsheets) on account of alleged circumvention by Pakistani companies. These communications, though they referred to the same mutually satisfactory solution, had been made under two different articles of the ATC: Pakistan had made its submission under Article 2.17 and the United States under Article 5. The TMB examined in detail the three main elements of the MOU reached, i.e. (i) a reduction of the debit made by the United States to Pakistan's category 361 quota; (ii) the introduction of restrictions on man-made fibre bedsheets and pillowcases; and (iii) the resolution of matters concerning US rules of origin changes with respect to imports of bedsheets and pillowcases from Pakistan into the United States. As a result of this examination, the TMB had, *inter alia*, recommended that the two parties re-examine one important aspect of the measures in question (i.e. the introduction of new restrictions on imports of man-made fibre bedsheets and pillowcases from Pakistan), in the light of the Body's detailed comments and considerations as reflected in its respective report. With a view to exercising proper surveillance of the implementation of its recommendation, the Body expected that the two parties would report back to it on the outcome of this re-examination, in a way that would enable the TMB to make a definitive statement on the justification and conformity of the actions with the relevant provisions of the ATC.

486. After a long process (the Members concerned first could not reach a common understanding) another mutually agreed solution was eventually reached between the two Members, which was jointly notified to the TMB in September 2000. The TMB made a detailed examination of the new MOU. It noted, *inter alia*, that this new mutually agreed solution referred to Articles 4 and 5 of the ATC, but the specific provisions of these Articles, which the parties considered to be relevant in the context of the introduction of new restrictions, had not been identified in the joint communication received. The TMB expressed its concern that it had not been in a position to determine, as required,

[243] See paragraphs 265, 269, 276 to 278, 283 to 284, 291 to 294, 303 to 305 above.
[244] See G/L/459, paragraphs 434 to 464.

the conformity, or lack thereof, of the measures agreed between Pakistan and the United States with the ATC. In particular, with reference to Article 8.3, it noted that full cooperation from the Members concerned was indispensable in facilitating the TMB's task of examining the measures referred to it under the ATC and of determining their conformity therewith. Continued failure to provide the requested information could seriously hamper the TMB's ability to discharge its functions in accordance with the requirements of the ATC. Therefore, the Body urged both parties to provide replies to the specific questions, as set out in the report of its examination without delay. In the context of the preparation of its second comprehensive report, the TMB decided to seek further clarifications or elaboration on a number of specific issues from certain Members. In this framework, the TMB had called the attention of Pakistan and the United States to its repeated requests for information and clarifications as above. Despite these reminders, no further communications were provided by either of the two Members on this matter. Under these circumstances, the TMB reiterated its serious concerns. Since then and during the third stage of the integration process, no further communication has been received from either Pakistan or the United States regarding this matter.

(d) Conclusions adopted by the Council for Trade in Goods in July 2002 in its second major review

487. In the conclusions adopted by the CTG regarding the implementation of the ATC in the second stage of the integration process, the following was reflected:

> "On the circumvention of restrictions in terms of ATC Article 5, a developed, restraining Member considered that this was a serious, continuing problem and was a major issue. Investigations had consistently shown a high rate of circumvention activity in several Members which had been used as transshipment points. Failure to deal effectively with this problem was contrary to the letter and spirit of the ATC and had had a negative impact on its industry. The ITCB Members stated that they did not condone circumvention of restrictions and had extended cooperation consistent with the ATC requirements. Citing figures from investigations by the Customs authorities of the Member concerned, they pointed out that claims about widespread circumvention were not supported by facts and were greatly exaggerated. On the contrary, the measures that the importing Member had put in place to address the perceived problem were disproportionate. By prescribing additional documentary requirements, these measures impeded the utilization of access available to restrained Members under the ATC."[245]

(e) Further comments by the TMB

488. The TMB recalls that, in terms of summarizing its assessment of the situation in the context of its comprehensive report for the second stage of the integration process, it stated the following: "On the basis of the comments provided by Members, it would appear that Members have invested substantial efforts with a view to addressing problems arising from the potential circumvention of the ATC, despite the sensitive and controversial nature of this subject. The fact that only one specific matter which would fall under the provisions of Article 5 has been referred to the Body since the entering into force of the ATC, is a clear manifestation of these efforts. The TMB encourages Members to further strengthen their cooperation in this regard in a balanced manner which would, one the one hand, reconcile the requirements of efficiency while not causing unnecessary additional burden for the respective authorities and economic operators involved, on the other."[246]

489. The TMB observes in this regard that, during the third stage of the integration process, no specific matter which would fall under the provisions of Article 5 has been referred to the Body.

[245] See G/L/556, paragraph 19.
[246] See G/L/459, paragraph 481.

Although there could be instances in which Members were confronted with problems such as those identified in Article 5, the particular matters could apparently be addressed and solved in the framework of the strengthened cooperation between the Members concerned.

III. IMPLEMENTATION OF PROVISIONS IN THE ATC RELATED TO SPECIAL INTERESTS OR PARTICULAR SITUATIONS OF CERTAIN WTO MEMBERS

490. The ATC contains specific provisions related to least-developed country Members, small suppliers, cotton-producing exporting Members and wool-producing exporting Members. Also, some other provisions of the Agreement could be applied in such a way as to provide favourable treatment, *inter alia*, to developing Members. Though certain issues, for instance the implementation of Article 2.18 related to small suppliers, are addressed in detail in other sections of the report, an overview of these provisions, together with developments in their implementation during Stage 3 of the integration process, is provided below.

A. LEAST-DEVELOPED COUNTRY MEMBERS

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

- the third preambular paragraph recalls that "it was agreed that special treatment should be accorded to least-developed country Members";

- 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 transitional safeguard measures taken pursuant to Article 6] shall 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);

- 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.

1. Implementation of the provisions related to least-developed country Members during Stages 1 and 2 of the integration process

(a) Articles 1.2 and 2.18

492. Of the Members maintaining restrictions under Article 2.1, the European Communities had not applied any restriction on imports from least-developed country Members. On the other hand, Canada and the United States had notified such restrictions *vis-à-vis* least-developed country Members, as follows:

- Canada had 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, both during Stages 1 and 2, of the growth rates set out in Articles 2.13 and 2.14(a);

- the United States had 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, both during Stages 1 and 2, of the growth rates set out in Articles 2.13 and 2.14(a).

493. In reply to the TMB's request for information and comments made in the context of the preparation of the second comprehensive report, the ITCB members had stated, *inter alia*, that "Article 1.2 provided for implementation of the growth-on-growth provision of Article 2 in such a way as to permit meaningful increases in access possibilities for small suppliers. It also provided that the same treatment be extended to least developed Members. The US and Canada failed to implement this provision consistently with its object and purpose. […] The report [of the TMB] should also emphasise that, with respect to least developed country Members, they failed to give any meaning to the provision". The ITCB members also "wish[ed] to point out that the TMB also seemed to overlook the importance of full and faithful application of the principle embodied in this provision in its review of the implementation of Article 2".[247]

494. Canada, in its reply to the TMB's request for information and comments in the context of the preparation of the second comprehensive report, had stated, *inter alia*, that "in compliance with the requirement to advance the growth rate for small suppliers as stipulated by ATC Article 2.18, Canada increased the growth rate for these exporters by 25 per cent on 1 January 1995 and again by 27 per cent on 1 January 1998. As a result, the annual growth rates on restraints remaining for most small suppliers and least developed countries now exceed 9 per cent and will increase to over 12.0 per cent on 1 January 2002 as a result of the 27 per cent increase in growth rates at the start of the third stage required by the ATC. [...] In addition, 17 small suppliers and least developed counties benefited directly when Canada increased unilaterally its restraint level on winter outerwear by 10 per cent on 1 January 1998. Small suppliers and least developed countries have also benefited from the removal of quantitative restraints into the Canadian market. Ten small suppliers and least developed countries benefited in the case of the elimination of restraints on tailor collared shirts on 1 July 1997 (Bangladesh, Bulgaria, Cuba [its only restraint], Macao, Mauritius, Myanmar, Poland, South Africa, Sri Lanka and Swaziland), while 9 of these Members benefited from the removal of various apparel items from restraints on 1 January 1998 under ATC Article 2.15 (Bangladesh, Bulgaria, Hungary, Macao, Myanmar, Poland, South Africa, Sri Lanka and Swaziland). In the latter case, Canada provided further market opportunities for these Members by not reducing the restraint levels on the products remaining under restraint in the affected categories. Thirteen small suppliers and least developed countries will also benefit directly as a result of the elimination of restraints and the removal of products from restraint on 1 January 2002 as a result of the third stage of integration. As in the earlier case, Canada will not be adjusting the restraint levels where restraints are partially liberalized, further expanding market opportunities for the affected Members".[248]

495. The European Communities, in its reply to the TMB's request for information and comments for the purpose of drawing up the second comprehensive report, had stated, that "in so far as least-developed country Members are concerned, the European Communities does not maintain any restrictions on products covered by the ATC. In addition, whether as a result of the Lomé Convention or the General System of Preferences (GSP), most imports to the Communities from LDCs benefit from zero duty provisions concerning tariffs. This includes large garment suppliers such as Bangladesh, who became in 2000 the EU's seventh supplier of textiles and clothing products".[249]

496. Japan, in its reply to the TMB's request for information and comments in the same context, had stated that "in accordance with the commitment of the Uruguay Round negotiation, Japan is implementing tariff reductions on textile and clothing products in ten years, from Fiscal Year

[247] See G/L/459, paragraph 577.
[248] Ibid., paragraph 578.
[249] Ibid., paragraph 579.

(FY) 1995 to FY 2004 (average rate of tariff will be reduced from 11.5 per cent in FY 1994 to 7.8 per cent in FY 2004). About 340 items of the textile and clothing products, which have formerly been exemptions to GSP system, are duty free and quota free for LDCs. By this measure, all the textile and clothing products from LDCs are duty free and quota free from 1 April 2001. All 48 LDCs are able to benefit from this system, while so far the coverage was 42 LDCs".[250]

(b) Articles 6.6(a) and 6.6(b)

497. During Stages 1 and 2 of the integration process, no safeguard measure was introduced on imports from any least-developed country Member. Consequently, these provisions were not invoked.

2. Developments during the third stage of the integration process

(a) Articles 1.2 and 2.18

498. As indicated in a previous section of this report[251], Canada and the United States increased for Stage 3 the annual growth rates applied during Stage 2 for WTO Members falling under the provisions of Article 2.18 in their respective regimes by 27 per cent. Of the least-developed country Members, the increase of the growth rates implemented by Canada affected the level of the restraints on imports from Bangladesh, Lesotho and Myanmar, while the US measure affected the restraint levels applied to imports from Haiti. It should be noted that the European Communities continued not to apply any restrictions to imports from least-developed country Members and the same applies to Turkey which essentially aligned its import regime on that of the EC.

499. As also reported earlier[252], effective from 1 January 2003, Canada implemented improvements to its preferential scheme for least developed countries and, in this framework, it began to grant quota-free access for all products covered by the ATC. Based on the respective notifications received from Canada, it appears that two WTO Members, namely Bangladesh and Lesotho were affected by the elimination of the quantitative restrictions previously maintained by Canada.

(b) Articles 6.6(a) and 6.6(b)

500. Since no safeguard measure has been taken by any Member on imports from any least-developed country Member during the period under review, no recourse has been made to the provisions of Articles 6.6(a) and 6.6(b).

B. SMALL SUPPLIERS AND NEW ENTRANTS IN THE FIELD OF TEXTILES AND CLOTHING TRADE

501. Article 2.18 provides for meaningful improvement in access for the exports of 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. The implementation of the provisions of Article 2.18 is reported in detail in a previous section of the report.[253]

502. Article 6.6(b) provides that, if a safeguard measure is introduced 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

[250] See G/L/459, paragraph 580.
[251] See paragraph 21 and 318 above.
[252] See paragraph 318 above.
[253] See paragraphs 311 to 319 above.

corresponding to this definition are not necessarily the same as the Members envisaged in Article 2.18. The only safeguard measures taken during the implementation of Stage 3 of the integration process (restraints agreed, pursuant to Article 6.9, between Brazil and, respectively, Chinese Taipei and Korea[254]) did not qualify for differential and more favourable treatment under the criteria established by Article 6.6(b).

C. COTTON-PRODUCING EXPORTING MEMBERS

503. 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". In its comprehensive report on the implementation of the ATC during its first stage, the TMB had observed, *inter alia*, that on the basis of the information and statements provided by some Members, and following a discussion that had taken place in the Council for Trade in Goods on issues related to the implementation of the ATC "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".[255]

504. In their reply to the TMB's request for information and notification made in the context of the preparation of the second comprehensive report, the ITCB members had stated that "no specific information has been notified by the restraining Members as to the manner in which this principle might have been reflected in their implementation; in, for example, the choice of products for integration or invocation of safeguard actions. Given the fact that cotton products have long been targeted for quota restrictions, the report should bring out that the application of Article 1.4 has been altogether ignored".[256]

505. Canada, in its reply to the TMB's request for information and comments in the same context, had stated that "Canada held consultations with exporting countries, including cotton-producing exporting countries, during the period immediately preceding the start of the ATC and, as a result of these consultations, made a number of improvements to Canada's restraints to accommodate the cotton-producing exporting Members' requests. Since these consultations, no cotton-producing exporting Member has approached Canada with specific concerns of access for cotton products. As a general comment, the structure of Canada's apparel categories does not differentiate between products according to fibre type. Cotton-producing exporting Members have benefited directly from the removal of restraints on apparel products with high cotton-content, including tailor-collared shirts in 1997 and various women's, girls' and children's clothing items (e.g., blouses and shirts) in 1998. These exporters will further benefit from the elimination of restraints on cotton products under Canada's third stage of integration".[257]

506. The European Communities, in its reply to the TMB's request for information and comments for the purpose of preparation of the second comprehensive report, had stated that "as to the cotton-producing exporting Members, the EC has consulted such members at earlier stages of the ATC's integration process and afforded full scope for consultation prior to establishing its third stage of

[254] See paragraphs 429 to 436 above.
[255] See G/L/179, paragraphs 313 to 316.
[256] See G/L/459, paragraph 585.
[257] Ibid., paragraph 586.

integration, by specifically offering consultations with all exporting WTO Members against which it maintained restrictions."[258]

507. The United States, in its reply to the TMB's request for information and comments in the same context, had stated that "the United States consulted with cotton producing countries before the entry into force of the ATC and reached agreements that were done with the provisions of Article 1.4 in mind. We have subsequently engaged in consultations with cotton producing countries to resolve issues raised by them. These consultations were also conducted with an eye to Article 1.4 and have been considered successful by all participants".[259]

508. In its comments and observations related to this matter in the second comprehensive report, the TMB, *inter alia*, noted the statements reflected in paragraphs 504 to 507 above and stated the following:

> "Furthermore, the TMB observes that in its first comprehensive report, it had, *inter alia*, encouraged interested Members to enter into consultations with a view to clarifying the issues related to the implementation of Article 1.4. In this regard, the TMB recalled that, should the need arise, the provisions of Article 8.4 are available for this purpose. In this respect the TMB notes that no WTO Member referred to it any specific issue with respect to the implementation of Article 1.4, and that it is not aware that the provisions of Article 8.4 have been used by any cotton-producing exporting Members or by any restraining Member for this purpose. In these circumstances, the TMB reiterates its encouragement to interested Members to enter into consultations with a view to clarifying the issues related to the implementation of Article 1.4 and recalls in this regard that, should the need arise, the provisions of Article 8.4 are available for this purpose. In addition, Members should consider the possibility that in notifying measures taken under different provisions of the ATC it should be also indicated, if possible and applicable, how the provisions of Article 1.4 have been reflected in the implementation of the measures in question."[260]

509. Against this background, it should be noted that no communication whatsoever has been received from any Member by the TMB during the implementation of Stage 3 of the integration process with specific reference to the provisions of Article 1.4.

D. WOOL-PRODUCING EXPORTING MEMBERS

510. 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 was taken under Article 6 during Stage 3, as had been the case during the previous two stages, affecting exports of wool products. This provision has, therefore, not been applied.

E. MORE FAVOURABLE TREATMENT TO BE ACCORDED TO RE-IMPORTS IN APPLYING THE TRANSITIONAL SAFEGUARD MECHANISM

511. 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

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[258] G/L/459, paragraph 587.
[259] Ibid., paragraph 588.
[260] Ibid., paragraphs 599 and 600.

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". Contrary to what had been the case during Stage 1[261], none of the restraints introduced pursuant to the provisions of Article 6 during Stage 2 provided more favourable treatment to the products envisaged in paragraph 6.6(d), since this type of trade did not represent a significant proportion of the total exports of the Members affected. The same applies to the transitional safeguard measures taken during the third stage of the integration process. This provision has, therefore, not been applied with respect to the transitional safeguard measures taken during Stage 2 and Stage 3.

F. SPECIAL TREATMENT AFFORDED TO MEMBERS WHICH HAVE NOT ACCEPTED THE MULTIFIBRE ARRANGEMENT (MFA) EXTENSION PROTOCOL SINCE 1986.

512. 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". As had been the case for the previous stages of the integration process, the TMB has not received any information on the extent (if any) to which recourse was made to this provision during the implementation of Stage 3.

G. TREATMENT ACCORDED TO DEVELOPING COUNTRY MEMBERS

513. The ATC contains a specific provision granting special treatment to imports of certain categories of products imported from developing country Members. In addition, some other provisions of the ATC could be applied in such a way as to provide favourable treatment, *inter alia*, to imports from such Members.

1. Special provision in favour of developing country Members

514. Paragraph 3(a) of the Annex to the ATC provides that actions under the transitional safeguard provisions in Article 6 of the ATC shall not apply to developing country Members' 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. Consistent with this provision, no safeguard action under Article 6 was introduced on such products during any Stage of the integration process.

2. Other provisions which could be applied in such a way as to provide favourable treatment, *inter alia*, to developing country Members

515. Some of the provisions of the ATC provide favourable treatment to a particular category of Members. Apart from the provisions related explicitly to the least-developed country Members (i.e the footnote to Article 1.2 and Article 6.6(a)), Members qualifying for the status of small suppliers and new entrants (Article 2.18) are mostly developing countries or customs territories.

516. In its first comprehensive report, the TMB had 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 [Section of the report], 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

[261] See G/L/179, paragraphs 319 and 320.

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)".[262] This statement was also reproduced in the TMB's second comprehensive report.[263]

H. VIEWS, COMMENTS AND ASSESSMENTS OF WTO MEMBERS IN RESPONSE TO THE TMB'S GENERAL REQUEST FOR INFORMATION

517. In their response to the TMB's request for information and comments in the context of the preparation of the present report, ITCB members stated the following under the heading of "special categories of suppliers":

> "As in previous stages of implementation, full regard has not been given by the restraining Members in Stage 3 to ATC provisions that envisaged special considerations for specific categories of suppliers, namely, the small suppliers, the least developed countries, the cotton-producing exporting countries; this despite reaffirmation, by the Council for Trade in Goods, of the importance of full implementation of those provisions in its report on the 'major review of ATC implementation during second stage of the implementation process' (cf. G/L/556, paragraph 22, indent 4).
>
> Thus Canada and the United States did not implement the growth-on-growth for small suppliers and least developed countries in accordance with the object and purpose of Articles 1.2 and 2.18 of the ATC. They continued to apply a different methodology than the one used by the EU in implementing the same provisions.
>
> It deserves to be recognized, however, that Canada notified (G/TMB/N/459 read with WT/COMTD/N/15/Add.1) the grant of duty- and quota-free treatment to imports from least developed countries under Article 2.15 of the ATC provided they met the necessary rules of origin criteria – although only from 1 January 2003 (the ninth year of ATC implementation).
>
> For cotton-producing exporting countries, on the other hand, none of the restraining countries extended any specific treatment under Article 1.4 of the ATC, nor has any notification been made concerning any consultations with any of the cotton-producing countries concerned within the meaning of this provision.
>
> In a nutshell, the relevant provisions of the Agreement have essentially gone un-implemented, rendering them to inutility."

518. The communication received from Canada contained the following elements, relevant to the consideration of the issues taken up in this section of the report:

> "LDCs
>
> Canada has implemented measures to improve access for imports from least developed countries (LDCs). The measures eliminate tariffs on most products except for certain agricultural products e.g., over-quota tariff items for dairy, poultry and egg products, and introduce new rules of origin requirements for textile and apparel products. Under these rules of origin, apparel products exported from LDCs will be eligible for duty-free treatment provided they are cut, or knit to shape, and sewn or assembled from inputs from any of the 48 eligible LDCs. Inputs from General Preferential Tariff (GPT) beneficiary countries may also

[262] See G/L/179, paragraph 323.
[263] See G/L/479, paragraph 594.

be used provided at least 25 per cent of the content of the apparel goods originates in the LDC exporting country. The rules of origin for fabrics and yarn allow for full accumulation of originating inputs from LDCs or GPT beneficiary countries. Any materials used in the textile or apparel products that originate from Canada are deemed to have originated in the LDC.

Small suppliers

The small exporters' growth-on-growth provisions provide for meaningful and significant increases in quota levels for products under restraint from these suppliers.

Small supplier growth rates will, in fact, double by phase three of the ATC. Some examples are: Sri Lanka's and Mauritius' quotas are both expanding by 12.1 per cent per annum.

Moreover, in implementing the small suppliers' growth-on-growth provisions, Canada adopted a methodology for calculating a small supplier such that the advanced formula applied to 16 exporting developing countries, five more than strictly required by the ATC.

Cotton-producing exporting Members

Over the past nine years, cotton-producing exporting countries have never raised the matter of the particular interests that they might have in the export of cotton products. In this respect, it should be noted that the structure of Canada's textile restraint category system, with few exceptions mainly for fabrics, does not differentiate products according to fibre type. This allows exporting Members a wider latitude to diversify their exports according to the needs of the market.

Canadian authorities, naturally, have always been prepared to consult with cotton-producing exporting Members with respect to their particular interests. In this respect, it should be noted that modification of Canada's category structure to benefit cotton products would result in an increase in the number of categories which would limit artificially, compared to the current situation, the ability of Members to maximize the rents from these quotas."

519. The communication from the United States contained the following elements, relevant to the consideration of the issues taken up in this section of the report:

"Article 2.18 of the ATC provides that small suppliers shall receive specified advances in growth rates throughout the term of the ATC. The United States complied with the provisions of Article 2.18 and, in Stage 3, since there were no more stages by which small suppliers' growth rates could be advanced, the growth rates of all suppliers were increased by an additional 27 per cent. We note that since the base levels of those suppliers had been increased at accelerated rates during the first two stages, they continued to benefit from the advanced staging received during Stages 1 and 2. Also we note that the United States has not implemented any textile safeguard actions on small suppliers under Article 6 of the ATC since 1995. The United States firmly believes it has implemented Article 2.18 in a manner consistent with its terms, as well as its object and purpose.

The ITCB also raises the US treatment of least developed countries. Virtually all LDCs are small suppliers not subject to quotas. Furthermore, the United States has already extended significant preferences to least developed Members through regional trade preference programmes benefiting sub-Saharan African countries and Caribbean countries. The latter two programmes provide benefits for the textile sector as well as other products.

With regard to cotton-producing exporting countries, we note that the base level quotas which formed the basis for the implementation schedule of the ATC were negotiated within the

parameters appropriate for cotton-producing countries, least-developed exporting countries, wool-producing countries, small suppliers, etc. With respect to further consultations, we note that cotton-producing countries did not seek to consult with the United States under this provision, and that some of the most vocal of those countries have maintained high tariffs, non-transparent customs procedures, and other mechanisms to restrain imports of textiles and apparel into their own markets."

I. FURTHER COMMENTS AND OBSERVATIONS BY THE TMB

520. As also reflected in the respective communications received from Members, the only important development during Stage 3 of the integration process affecting matters covered by this section of the report was the implementation by Canada, as from 1 January 2003, of improvements to its preferential scheme for least developed countries, providing duty-free and quota-free treatment if the respective rules of origin criteria are met. It should be also recalled that the European Communities and Turkey do not maintain restrictions under the ATC on imports from least-developed country Members. Noting the statement of the United States that "[v]irtually all LDCs are small suppliers not subject to quotas", it should be noted that there is at least one important exception (Bangladesh) whose imports into the United States continue to be subject to restrictions under the ATC. Furthermore, the reference by the United States to significant preferences granted to LDCs "through regional trade preference programmes" is duly noted. However, these programmes have not yet been notified to the WTO; therefore, the TMB has no basis to assess their possible impact.

521. Regarding the implementation of the provisions of Article 2.18 in favour of small suppliers and new entrants, the TMB recalls that the methodology chosen by the respective restraining Members for the implementation during Stage 1 predetermined the possible impact of the implementation of the same provisions during the successive integration stages. The TMB notes with regret that, as a follow-up to the Doha Ministerial Decision, the Council for Trade in Goods was not in a position to make any recommendation to the General Council in this matter. It is also observed that, despite the TMB's respective comments made in the previous comprehensive reports[264], Members apparently have made no attempt to implement Article 2.18 by implementing "at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions."

522. Finally, with respect to the implementation of the provisions of Article 1.4 in favour of cotton-producing exporting Members, no change in the respective Members' perception and attitude can be observed. The TMB notes the concerns expressed by ITCB members in their communication. It also notes, however, that its earlier and repeated encouragements to interested Members to enter into consultations with each other [265] have not been followed. Furthermore, while noting the statement of the United States according to which some consideration had been given in establishing "the base level quotas [...] [to] parameters appropriate [*inter alia*] for cotton-producing countries", it should be observed that (i) there is no explanation regarding what were "the parameters appropriate" to these Members and that (ii) Article 1.4 appears to address the particular interests of such Members throughout the period of ATC implementation and is not limited to the process of establishing the base levels (prior to the beginning of the implementation of the ten-year transition period).

[264] See G/L/459, paragraph 704.
[265] See G/L/179, paragraph 316 and G/L/459, paragraph 705.

IV. ACTIONS REFERRED TO IN ARTICLE 7 WITH A VIEW TO ABIDING BY GATT 1994 RULES AND DISCIPLINES SO AS TO ACHIEVE IMPROVED ACCESS TO MARKETS AND ENSURE THE APPLICATION OF POLICIES RELATING TO FAIR AND EQUITABLE TRADING CONDITIONS – IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 7

A. THE PROVISIONS OF ARTICLE 7

523. Article 7 reads as follows:

> "1. 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.
>
> Such actions shall be without prejudice to the rights and obligations of Members under GATT 1994.
>
> 2. Members shall notify to the TMB the actions referred to in paragraph 1 which have a bearing on the implementation of this Agreement. To the extent that these have been notified to other WTO bodies, a summary, with reference to the original notification, shall be sufficient to fulfil the requirements under this paragraph. It shall be open to any Member to make reverse notifications to the TMB.
>
> 3. Where any Member considers that another Member has not taken the actions referred to in paragraph 1, and that the balance of rights and obligations under this Agreement 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 concerned shall form a part of the TMB's comprehensive report."

B. BACKGROUND: SOME OF THE RELATED COMMENTS AND OBSERVATIONS MADE BY THE TMB IN ITS SECOND COMPREHENSIVE REPORT

524. In the second comprehensive report, the TMB noted, *inter alia*, that no notifications or reverse notifications had been addressed to it with specific reference to the provisions of Article 7.2 since the beginning of the implementation of the second stage of the integration process. The TMB added that actually, no such notifications had been received since the adoption of the TMB's first comprehensive report, nor had such notifications been addressed to the Body during the first stage of the integration process.[266]

[266] See G/L/459, paragraph 534 and related footnote.

525. In the context of the preparation of the second comprehensive report, the TMB had invited Members to submit notifications or information, as appropriate, in relation to the implementation of, among others, Article 7.1, with special regard to the notification requirements specified in Article 7.2. In response to this request, six contributions were received from Members touching upon aspects relevant to the consideration of the implementation of Article 7. These contributions were submitted by Canada, the European Communities, ITCB members, Japan, Turkey and the United States and they were incorporated by the TMB into its second comprehensive report.[267] In its related remarks, the TMB observed, *inter alia*, that:

- "providing notifications to the TMB regarding the actions referred to in Article 7.1 which have a bearing on the implementation of the ATC, is a positive obligation, applicable to all Members pursuant to Article 7.2;
- the same Article 7.2 also provides the possibility of making reverse notifications to the TMB;
- on the one hand, Members hardly made any formal notification to the TMB under the provisions of Article 7;
- on the other hand, several of them decided to include a number of serious concerns regarding the implementation of Article 7 by some other Members, when providing information and comments in response to the TMB's request."[268]

526. Though the TMB was of the view that "it is neither required under the ATC, not is it a reasonable expectation to take up and address, in substance, each and every comment included in the responses received from Members"[269], it decided to offer some comments and observations[270], in order to contribute to Members' future discussions and assessments regarding the implementation of the ATC in general and of the provisions of Article 7 in particular. Furthermore, the TMB recommended to the Council for Trade in Goods that the Council, *inter alia*, recall that the provisions of Article 7, like any other provisions of the ATC, have to be complied with by Members and, also, invite Members to notify to the TMB, pursuant to Article 7.2, the actions referred to in Article 7.1, which have a bearing on the implementation of the ATC.

C. CONCLUSIONS ADOPTED BY THE COUNCIL FOR TRADE IN GOODS IN JULY 2002 IN ITS SECOND MAJOR REVIEW

527. In the report adopted by the CTG regarding the implementation of the ATC in the second stage of the integration process, the following was reflected:

- "The developed, restraining Members referred to Article 7.1(a) of the ATC on improved market access for textile and clothing products and considered that this provision had not produced a noticeable result. While it required that improved access to markets should be achieved through such measures as tariff reductions and bindings, reductions or elimination of non-tariff barriers and facilitation of Customs, administrative and licensing formalities, the markets in many developing Members required greater access for the exports of textile and clothing products. The ITCB Members and some other developing Members considered that all Members, developed and developing, had been implementing their specific Uruguay Round commitments in accordance with their schedules of concessions. They referred to the

[267] G/L/459, paragraphs 539 to 549.
[268] Ibid., paragraph 551.
[269] Ibid., paragraph 552.
[270] Ibid., paragraphs 554 to 572.

report by the TMB which stated that there had been no notifications of non-compliance with any specific market-access commitments undertaken as a result of the Uruguay Round. Therefore, there did not appear to be a problem and, in fact, a number of developing Members had adopted autonomous market liberalization measures. They emphasized that any additional reductions in tariffs or bindings was a matter for future negotiations.

[...]

- Based on the discussions, which are set out in detail in the reports on the meetings, the Council noted a number of considerations and arrived at certain conclusions, as follows:

  [...]
  the views expressed recalled the provisions of Article 7 and called on all Members, as part of the integration process and with reference to the specific commitments undertaken as a result of the Uruguay Round, to take actions to abide by GATT 1994 rules and disciplines so as to achieve, *inter alia*, improved market access.
  [...]

- On a number of other topics examined by the Council, the understandings and positions held by groups of Members differed substantially and, thus, it was not possible to arrive at agreed conclusions. The detailed views are set out in [the relevant minutes of the Council's respective meetings] and are summarized hereunder.

  [...]

- Reference was also made by ITCB Members and some other developing Members to the use of anti-dumping investigations and measures on restrained products, which had had serious adverse effects on the exports of some developing countries. There had been an impairment of the balance of rights and obligations as the market access made available through integration and growth rates, though inadequate, were being taken away through anti-dumping actions in this area. According to these Members, by disrupting the utilization of access, these actions had impeded the realization of the objectives of the ATC. They pointed out that several aspects of the methodology used by the Member concerned in dumping determinations had since been faulted by a WTO dispute settlement panel and the Appellate Body. In response, the concerned restraining Member reiterated that it applied anti-dumping legislation in a fully transparent manner in compliance with WTO obligations."[271]

D. NOTIFICATIONS OF MEMBERS REGARDING DEVELOPMENTS RELEVANT IN THE CONTEXT OF THE IMPLEMENTATION OF ARTICLE 7 DURING THE THIRD STAGE OF THE INTEGRATION PROCESS

528. Against the background summarized in paragraphs 524 to 527 above, it should be noted that during the period of implementation of Stage 3 of the integration process no notification has been received by the TMB from any WTO Member with specific reference to any of the provisions of Article 7. Thus, despite the unambiguous obligations specified in the relevant provisions of the ATC, none of the Members has found it appropriate to notify to the TMB, pursuant to Article 7.2, any action referred to in Article 7.1 which could have a bearing on the implementation of the ATC. Likewise, no

[271] See G/L/556, paragraphs 20, 22, 23 and 29.

summary with reference to the respective original notification(s) that could be addressed to other WTO bodies, has been provided to the TMB. Also, no reverse notifications, as specified in Article 7.2, have been received. Similarly, the TMB has not received any information from any Member regarding possible cases where any Member considered that another Member had not taken the actions referred to in Article 7.1, and that the balance of rights and obligations under the ATC had been upset and, therefore, the Member concerned decided to bring the matter before the relevant WTO bodies, as provided for in Article 7.3. The TMB noted that, in the absence of such information that should have been provided by Members, the Body did not have to comply with the requirements defined in the last sentence of Article 7.3, according to which "[a]ny subsequent findings or conclusions by the WTO bodies concerned shall form a part of the TMB's comprehensive report."

E. VIEWS AND COMMENTS OF WTO MEMBERS IN RESPONSE TO THE TMB'S GENERAL REQUEST FOR INFORMATION

529. In their communication, ITCB members stated the following under the heading of "Strengthening of GATT rules and disciplines":

> "During the Stage under progress, anti-dumping activity in the EU has continued, especially involving the import of bed linen in one form or the other, turning it into an ongoing problem for exporters and the exporting countries concerned. Besides hampering the full utilization of quota access and thereby increasing the restrictiveness of relevant restrictions, these actions are in sharp contrast to the commitment under Article 7 of the ATC that 'Members shall take such actions as may be necessary to abide by GATT rules an disciplines so as to ensure the application of policies relating to fair and equitable trading conditions as regards textiles and clothing in such areas as anti-dumping rules and procedures …'".

530. In its response to the TMB's request for clarifications and comments made in the context of the preparation of this report and related to different specific aspects of ATC implementation, the European Communities commented upon, *inter alia*, the statement made by ITCB members, included in paragraph 529 above. The EC stated in this regard the following:

> "[T]he Communities is of the view, that contrary to the allegation made by ITCB as mentioned [in the ITCB members' communication, reproduced in paragraph 529], the ATC does not prescribe an all out prohibition against recourse to anti-dumping procedures but, rather, it contains an invitation to moderation, which, however, must be judged on the merits of individual cases and circumstances. This rule applies obviously to all Members and such moderation of use of anti-dumping remedies is to be expected from all countries some of which are now frequently invoking this remedy."

531. The communication received from Turkey contained the following:

> "In relation to Article 7.1, with special reference to Article 7.2, since 1996 with the formation of the Turkey-EU Industrial Customs Union, Turkey started to implement a very low level of tariffs much below its legal and bound tariffs obligations.
>
> Turkey has also been implementing its anti-dumping and countervailing duty policies in accordance with GATT 1994 rules and Article 7.1(b) of the ATC. The [attached] Table [reproduced in full in this report as Table 9] depicts the current implementation of anti-dumping measures regarding textiles and clothing products."

Table 9

PRODUCTS SUBJECT TO ANTI-DUMPING DUTIES IN TURKEY
(as communicated by Turkey to the TMB)

CN Code	Commodity	Country/territory	Communiqué No.	Final measure date/No. of official	Anti-dumping duty
5503.20.00.00.00	Polyester synthetic staple fibres (not processed)	Belarus (Review)* Korea, Rep. of Indonesia	98/3 2000/2	29.05.1998/23356 13.03.2000/23992 	19% %11.9 - %24.6 %6.2 - %37.4
5402.43	Polyester flat yarns	Korea, Rep. of	99/7	30.11.1999/23892m	0% - 21.2%
5402.33	Polyester textured yarn	India Chinese Taipei Korea, Rep. of	2000/7 2000/7 	27.06.2000/24092 28.06.2000/24093 	%6.8 - %20.3 %9.9 - %28.6 33.70%
55.13 55.14 55.15 55.16	Woven fabrics of synthetic and artificial staple fibres	China	2001/2	15.02.2001/24319	87%
5407.**	Woven fabrics of synthetic filament yarn	China Chinese Taipei Korea, Rep. of Malaysia Thailand	 2002/2 	 13.02.2002/24670 	%70.44 %13.91 - %30.84 %3.51 - %40 %63.23 - %15.93 %8.67 - %30.93
6301.40 6301.90	Acrylic mink blanket	China	2002/14	08.12.2002/24957	4 $/kg.
5806.32.90.00.00	Hook&Loop	China Chinese Taipei	 2002/15	 13.12.2002/24962	3.86 $/kg. 1.83 $/kg.
5503.20	Polyester synthetic staple fibres	India Chinese Taipei Thailand	 2003/14 	 29.07.2003/25183 	%16.5 - %23.9 %6.4 - %20.1 %15.8 - %22.0

* Expiry Review

** Detailed CN Codes are listed in the relevant Communiqué.

532. In its communication, while providing comments with respect to different specific points raised by ITCB members in their communication (which were related to the implementation of ATC provisions other than those specified in Article 7), the United States stated, *inter alia*, the following:

> "[T]he United States notes that several ITCB members have maintained policies and practices that have effectively limited access to markets in this sector, despite the obligation in Article 7 of the ATC to 'achieve improved access to markets for textiles and clothing through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities'. While the United States has been opening its market, ITCB members have been keeping theirs shut to US exports. Under such conditions, it is impossible for the United States to justify early integration, as requested by the ITCB. Moreover, the United States hopes and expects as part of its review of the implementation of the ATC that the TMB will review whether ITCB members have adhered to their obligations under Article 7 of the ATC. US import statistics clearly demonstrate that the United States has lived up to its obligations under Article 7, with imports of textile and apparel products up by 150 per cent since 1994, increasing from 17.3 Billion Square Metres Equivalent (BSME) in 1994 to 43.2 BSME for the year ending March 2004. We question whether ITCB members can say the same."

F. THE TMB'S ASSESSMENT REGARDING THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 7 DURING STAGE 3 OF THE INTEGRATION PROCESS

533. Keeping in mind its earlier observation according to which providing notifications to the TMB regarding the actions referred to in Article 7.1 which have a bearing on the implementation of the ATC, is a positive obligation, applicable to all Members pursuant to Article 7.2[272] and recalling also its respective recommendation made to the Council for Trade in Goods[273], the TMB is bound to reiterate that during the period of implementation of Stage 3 of the integration process it has not received any notification from any Member with specific reference to any of the provisions of Article 7. Therefore, in a strict sense, for the purpose of the present report, it would be sufficient for the TMB simply to note this fact. Indeed, nothing in the language of Article 7, nor in that of any other provision of the ATC requires the TMB, not even in the context of drawing up its comprehensive report, to give a detailed account of those (otherwise possibly relevant) issues that have never been referred to it or brought to its attention in accordance with the requirements of the provisions of the ATC. In particular, an attempt by the TMB to provide an illustrative list of matters that can be of relevance (also) in the context of the implementation of Article 7 cannot substitute the notifications or information that should have been addressed to the Body by the Members concerned. In the same vein, communications received from Members in response to the TMB's general request for information made in the context of the preparation of this report cannot be considered as a substitute to complying with the procedural requirements laid down in the provisions of Article 7.

534. Notwithstanding the validity of its statements as above, the TMB has decided to provide, for the sake of the comprehensiveness of this report and strictly as background information, a summary of some of the issues that can be relevant in this context and could be identified on the basis of official WTO documents (notifications and communications to and reports of other WTO bodies). Also, the Body offers some further comments and observations, in particular in light of some of the comments made by certain Members in their respective communications addressed to the TMB in the context of the preparation of this report.

[272] See paragraph 525 above.
[273] See paragraph 526 above.

G. INFORMATION AVAILABLE TO THE TMB; FURTHER COMMENTS AND OBSERVATIONS BY THE BODY

1. Information available regarding the implementation of the provisions of Article 7.1(a)

535. Following the language of Article 7.1(a), "[a]s 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 [...] 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."

536. The TMB does not have sufficient information at its disposal that would enable it to offer a well considered assessment on the extent to which Members have complied with the substantive obligations defined in Article 7.1(a). To the extent that no notifications have been addressed to it indicating the contrary and that no such notifications made to other WTO bodies have been brought by Members to the TMB's attention, it can be assumed that Members continued to implement, as scheduled, the respective specific market-access commitments undertaken by them as a result of the Uruguay Round. Also, the TMB assumes that the Committee on Market Access, in supervising the implementation of concessions made in the Uruguay Round with respect to tariffs and non-tariff measures, has continued to rely on cross- or reverse notifications in identifying potential problems that might arise out of the implementation of such concessions. The TMB notes that no particular problems related to the implementation of concessions affecting products covered by the ATC have been brought to its attention.

537. It also happened that Members submitted notifications to the Committee on Market Access containing further improvements in the concessions undertaken in the Uruguay Round affecting (also) products covered by the ATC. While, obviously, some of such notifications could escape the TMB's attention, the Body is aware that, for instance, Pakistan circulated in July 2003 a communication regarding modification to the country's schedule of commitments, affecting textiles and clothing products.[274] In continuation of this communication, in a further communication circulated on 29 June 2004, "the Government of Pakistan convey[ed] further modifications to the said schedule for Chapter headings 60.03 to 60.06 which will be bound at a tariff rate of 25 per cent with immediate effect."[275]

538. It can be also noted, however, that in December 2003, the United States requested consultations with Egypt "pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 7 of the Agreement on Textiles and Clothing ("ATC") regarding the tariffs applied to textile and apparel products and the Decree of the President of the Arab Republic of Egypt No. 469 of the year 2001 ("Decree No. 469") and any amendments, related regulations or other implementing measures."[276] It should be emphasized that though in its communication addressed to the DSB the United States explicitly referred to, *inter alia*, Article 7 of the ATC, no information or communication whatsoever has been transmitted to the TMB regarding this matter.

539. The request for consultations mentions that "[i]n the Uruguay Round, Egypt agreed to remove a general prohibition on the importation of apparel and made-up textile products by 1 January 2002. It also agreed to bind its duties under HS Chapters 61 (articles of apparel and clothing, knitted and crocheted) and 62 (articles of apparel and clothing, not knitted or crocheted) at an *ad valorem* rate of

[274] See G/MA/TAR/RS/94.
[275] See G/MA/TAR/RS/94/Add.1.
[276] See WT/DS305/1 and G/L/667.

46 per cent in 2003, 43 per cent in 2004 and 40 per cent thereafter. Moreover, it agreed to bind its duties under HS Chapter 63 (other made up textile articles; sets; worn clothing) at an *ad valorem* rate of 41 per cent in 2003, 38 per cent in 2004, and 35 per cent thereafter. The United States understands that, on 31 December 2001, just before the import prohibition was set to expire, [...] Decree No. 469 was issued amending the customs duties applicable to a number of imported articles, including articles that enter under HS Chapters 61, 62 and 63. The amended duties were specific [...], rather than *ad valorem*. It appears that the specific duties applied by Egypt greatly exceed Egypt's bound rates of duty. Specifically, it appears that the *ad valorem* equivalent of these duties range from a low of 141 per cent to a high of 51,296 per cent – all well above the bound rates.

The United States therefore believes that these tariffs, Decree No. 469 and any related measures are inconsistent with the obligations of Egypt under Article II of the GATT 1994 and Article 7 of the ATC."[277]

540. Subsequently, in mid-January 2004, the European Communities officially requested to be joined in the consultations requested by the United States.[278] The EC referred, *inter alia*, to the fact that it has a substantial trade interest in the matter. In response, the delegation of Egypt informed the DSB that it had accepted the request of the European Communities to join the consultations.[279] Since then, no further communication has been circulated to WTO Members regarding possible developments with respect to this issue.

541. As regards other measures referred to in Article 7.1(a), some developing country Members have requested or have been granted a reservation to maintain a system of minimum values, often affecting also imports of certain textile and clothing products, for a limited period of time under paragraph 2, Annex III of the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement).[280] The TMB is also aware that a number of Members submitted notifications to the Committee on Import Licensing of their respective licensing procedures which covered also certain textile and clothing products. It can be mentioned in this regard that a notification provided by Indonesia in April 2003, submitting a Decree "regarding procedures for importing textile"[281], led a few Members, such as Australia and the United States to raise certain questions and also to express certain concerns. The United States, in particular, stated, *inter alia*, that "[i]t [...] is particularly concerned with Indonesia's decision to grant licences only to textile producers with a local production capacity, and to bar the transfer of imported textiles to other private parties. It appears to the United States that this system is inherently trade-distortive, and requests that Indonesia explain to the Committee how this system is consistent with the Agreement on Import Licensing Procedures."[282]

542. In its reply, Indonesia explained, *inter alia*, that the relevant Decree "aims at only providing administrative import procedures, with the main purpose to combat smuggling activities that cause:

- anti-competitive behaviour
- unfair trade in the domestic market

[277] See WT/DS305/1 and G/L/667.
[278] See WT/DS305/2.
[279] See WT/DS305/3.
[280] See G/VAL/2/Rev.18.
[281] See G/LIC/N/2/IDN/1.
[282] See G/LIC/Q/IDN/5.

- an adverse impact on domestic market
- loss of government revenue
- an adverse impact on investment and labour."

Furthermore, "[t]he smuggling activities in Indonesia have indeed been a serious problem since these activities have significantly increased since 2000 [...]. Indonesia has a grave concern as the bulk of illegal textiles products in the domestic market has created a multi-adverse effect on various business activities as well as employment and government revenue. Indonesia is of the view that these problems have to be resolved by all means, including import licensing. [...] Of various administrative procedures, [Indonesia] still believe[s] that licensing procedures are the only effective means to administer all textiles imports and all kinds of imported products as contained in the Decree. By this policy, the Government will very easily identify and combat illegal textiles products."[283]

543. In the same vein, "[r]egarding the question of whether the Decree is trade-restricting according to Article 3.2 of the Agreement on Import Licensing Procedures, Indonesia is of the view that the Decree is not in breach of the said provision since:

- no person, firm or institution will be refused an import licence as far as they fully comply with all requirements as contained in the Decree (Article 2.2(a)(i) of the Agreement); [...]
- Article 4 of the Decree states that the approval or rejection of the application for a licence shall be issued in no less than ten working days. The period for processing the application as contained in the Decree is much less than provided for in Article 3.5(f) of the Agreement on Import Licensing Procedures which requires 30 working days to be approved. Therefore no burden for companies to apply for a licence;
- the Decree does not limit the number of companies, institutions or persons to have import licences as far as they fully comply with all requirements and no limitation as to the volume to be imported by each company. There have been as many as 315 importers which have had import licences and import licences are still open to other companies that would like to be involved in textiles import activities."[284]

544. During Stage 3 of the integration process, a number of notifications summarizing measures that were intended to be put into effect, were notified to the Committee on Technical Barriers to Trade covering (also) textiles and clothing products. An illustrative list of such notifications, drawn up on the basis of the notifications circulated, is contained in Table 10.

[283]See G/LIC/Q/IDN/5.
[284] Ibid.

Table 10

NOTIFICATIONS SUBMITTED TO THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE COVERING (ALSO) TEXTILES AND CLOTHING PRODUCTS

NOTIFYING MEMBER	DATE OF CIRCULATION	PRODUCTS AFFECTED/MEASURE	STATED OBJECTIVE OF THE MEASURE
Korea	23.01.2002	Among others: lifejackets for recreational purposes; protective helmets, etc.	Quality management promotion and consumer product safety
Philippines	08.03.2002	Safety belt for road vehicles	Safety belt users' protection
Peru	31.05.2002	Among others: footwear, uppers of textile materials	Consumer information
Venezuela	31.07.2002	Textile clothing	Human health, prevention of practices which might mislead users
Brazil	13.08.2002	Among others: threads of cotton, linen, wool, silk, viscose, polyamide, polyester	Consumer's safety
Brazil	12.08.2002	Textile products (HS Section XI)	Consumer's safety
Brazil	04.11.2002	Textile products (HS Chapters 61, 62 and 63)	Labelling requirements and consumer's protection
Brazil	30.01.2003	Among others: crepe bandages, etc. (HS 30.05)	Labelling requirements, consumer's safety; prevention of deceptive practices
China	19.06.2003	Yarns, fabrics and other made-up products	To protect human health and safety
El Salvador	19.06.2003	Textile products, articles of apparel and clothing accessories	Establish commercial information that must be affixed to the products
Canada	29.08.2003	Lifejackets	Protection of human safety
Peru	03.09.2003	Among others: motor vehicle safety belts	End-users' safety
Mexico	08.10.2003	Textile products, articles of apparel and clothing accessories	Update the labelling requirements, consumer information, prevention of deceptive practices
Chinese Taipei	11.11.2003	Full body harness	Consumer protection

NOTIFYING MEMBER	DATE OF CIRCULATION	PRODUCTS AFFECTED/MEASURE	STATED OBJECTIVE OF THE MEASURE
European Communities	12.12.2003	Certain textile products (HS Chapters 50-63), if labelling is required under the respective directive and the product contains polylactide fibre	To better inform consumers
Guayana	29.01.2004	Garments and textiles	Protection of fraud; prevention of misleading labelling and advertising

Source: G/TBT/GEN/N/series

545. Finally, recalling that in its communication, the United States stated, *inter alia*, that it "hopes and expects [that] as part of its review of the implementation of the ATC, the TMB will review whether ITCB members have adhered to their obligations under Article 7 of the ATC", the TMB observes the following:

- in the overview reflected in paragraph 528 as well as in paragraphs 535 to 544 above, the Body addressed issues relevant in the context of implementation of Article 7.1(a) by all Members;

- as clearly indicated in paragraph 528, no notification whatsoever has been received by the TMB from any WTO Member (the United States included) with specific reference to any of the provisions of Article 7;

- as also stated in paragraph 536 above, it would appear that Members continued to implement their specific commitments undertaken as a result of the Uruguay Round and no particular problem related to such implementation, affecting products covered by the ATC have been brought to the attention of the TMB by any WTO Member;

- a general statement claiming that certain Members have been keeping their markets shut to exports from another Member, without identifying whether specific commitments undertaken as a result of the Uruguay Round have been adhered to, or not, does not constitute sufficient basis for offering further comments.

2. Information available regarding the implementation of the provisions of Article 7.1(b)

546. Following the language of Article 7.1(b), "[a]s 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 [...] 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."

547. As noted earlier, during the period of implementation of Stage 3 of the integration process the TMB has not received any notification or information from Members, pursuant to either Article 7.2 or Article 7.3 that would have been related to the implementation of the provisions of Article 7.1(b).

548. The TMB notes that in their communication provided in response to the general request for information in the context of the preparation of the present report, ITCB members stated, *inter alia*, that "[d]uring the Stage under progress, anti-dumping activity in the EU has continued, especially involving the import of bed linen in one form or another, turning it into an ongoing problem for exporters and the exporting countries concerned." The TMB is aware that in March 2002, India requested consultations with the European Communities pursuant to Articles 4 and 21.5 of the Dispute Settlement Understanding, Article XXIII of the GATT and Article 17 of the Anti-Dumping Agreement concerning, *inter alia*, the EC's alleged non-compliance with the DSB rulings and recommendations in the dispute "European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India."[285] (The original dispute, as also reported by the TMB in its second comprehensive report[286], was related to the imposition by the European Communities of provisional anti-dumping duties in 1997, followed by the imposition of final duties at the end of the same year. The respective panel report, as modified by the report of the Appellate Body, was adopted by the DSB in March 2001). Since the consultations held failed to settle the dispute, India requested the DSB to establish a panel.[287]

549. At the meeting of the DSB on 22 May 2002, the representative of India stated, *inter alia*, that the panel and Appellate Body reports, as adopted in March 2001, "had concluded that the EC's imposition of definitive anti-dumping duties on imports of cotton-type bed linen from India was inconsistent with the requirements of the Anti-Dumping Agreement. In accordance with these Reports, the DSB had recommended that the EC bring its measure into conformity with its obligations under the Anti-Dumping Agreement. On 7 August 2001 the Council of the EC had adopted Regulation 1644/2001 amending the original definitive anti-dumping duties on bed linen from India, while simultaneously suspending its application. At that time, India had strongly disagreed that this 're-determination' complied with the recommendations of the Panel and the Appellate Body. That 're-determination' also provided for the expiry of the amended measures within six months after entry into force of the amended Regulation, unless a review had been initiated before that date. Unfortunately, on 13 February 2002, the EC had initiated a so-called 'partial interim review' against India, thereby compounding the problems by basing an illegal review on a flawed redetermination. On 8 March 2002 India had requested the EC to enter into consultations in order to try and solve the problems caused by the re-determination and the partial interim review. On 25 and 26 March 2002 these consultations had been held in Geneva. They had allowed a better understanding of the respective positions, but had failed to settle the dispute. This left India no choice but to seek recourse to Article 21.5 of the DSU, since 'there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings'. In particular, India considered that in implementing the recommendations and rulings of the DSB in this dispute through its re-determination and further action and by initiating a partial interim review the EC: (i) continued to miscalculate and overstate the dumping margins; (ii) resorted to unwarranted cumulation by combining India's imports with a country that did not dump; (iii) overstated the volume of dumped imports from India; (iv) sought to evaluate all relevant economic injury factors even in the absence of adequate data; (v) had not demonstrated that the dumped imports caused injury; (vi) had initiated a review that is impermissible under the Anti-Dumping Agreement; and (vii) had failed to respect India's status as a developing country. For these reasons India considered that the EC had failed to comply with the recommendations of the Panel and the Appellate Body and thus had failed to comply with the DSB's recommendations and rulings. For these reasons, India was requesting that a panel be established under Article 21.5 of the DSU to determine whether the EC had complied with the DSB's recommendations and rulings by the due date and whether the EC's re-determination and its further action were consistent with the covered Agreements."[288]

[285] See WT/DS141/12.
[286] See G/L/459, paragraph 566.
[287] See WT/DS141/13/Rev.1.
[288] See WT/DSB/M/124, paragraph 53.

550. The representative of the European Communities said, *inter alia*, that the EC was confident that it had fully and faithfully implemented in all respects the DSB's recommendations and rulings in this case. On each occasion, the European Communities had provided to India all clarifications requested and showed that all relevant DSB's rulings and recommendations had been scrupulously observed. In the light of the above and taking into account the fact that no anti-dumping duties effectively apply to the relevant Indian exports, the European Communities did not see any reason behind India's request for an implementation panel. Despite this, if India insisted on its request, the European Communities was ready to accept the establishment of the panel.[289] The DSB agreed, pursuant to Article 21.5 of the DSU, to refer to the original panel, if possible, the matter raised by India.

551. At its meeting on 24 April 2003, the Dispute Settlement Body considered the Appellate Body report[290] and the panel report[291] pertaining to this matter. While the panel found that the EC's definitive anti-dumping measure on imports of bed linen from India (EC Regulation 1644/2001) was not inconsistent with the Anti-Dumping Agreement or the Dispute Settlement Understanding, the Appellate Body reversed two findings of the panel, namely that:

- the method for calculating amounts for administrative selling and general costs and profits provided for in Article 2.2.2(ii) of the *Anti-Dumping Agreement* may be applied where there is data on administrative, selling and general costs and profits for only one other exporter or producer; and

- in calculating the amount for profits under Article 2.2.2(ii) of the Anti-Dumping Agreement, a Member may exclude sales by other exporters or producers that are not made in the ordinary course of trade.

As a consequence, the Appellate Body concluded that the European Communities, in calculating amounts for administrative, selling and general costs and profits in the anti-dumping investigation at issue in this dispute, acted inconsistently with Article 2.2.2(ii) of the Anti-Dumping Agreement. The Appellate Body recommended that the DSB request that the European Communities bring its measure found to be inconsistent with the Anti-Dumping Agreement into conformity with its obligations under that Agreement. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

552. Following the above, in January 2004 the European Communities notified anti-dumping actions taken, *inter alia*, with respect to imports of cotton-type bed linen from India.

553. In light of the developments summarized in paragraphs 548 to 552 above, it would appear that during Stages 2 and 3 of the integration process, as put by ITCB members, "anti-dumping activity in the EU has continued, especially involving the import of bed linen in one form or the other [...]". The TMB, of course, has neither the mandate, nor the necessary factual knowledge to pronounce itself on the merits of the specific cases involved. However, it can offer a few comments in relation to the statements contained in the contributions received in this regard from ITCB members[292] and the European Communities[293], respectively. These comments are the following:

- In the view of the TMB, ITCB members did not allege that the ATC would "provide an all out prohibition against recourse to anti-dumping procedures"; as claimed by the submission received from the European Communities.

[289] WT/DSB/M/124, paragraph 54.
[290] See WT/DS/141/AB/RW.
[291] See WT/DS/141/RW.
[292] See paragraph 529 above.
[293] See paragraph 530 above.

- As recognized also by the European Communities, recourse to anti-dumping procedures "must be judged on the merits of the individual cases and circumstances". Due consideration should be given, in this regard, also to the fact that the products in question have been and continue to be subject to restrictions maintained under the ATC. Repeated anti-dumping procedures affecting these products could, indeed, create an ongoing problem for the exporting Member(s) concerned as raised by ITCB members in their communication.

- Having said the above, the TMB cannot take a view on whether "these actions are in sharp contrast to the commitment under Article 7[1(b)]", as claimed by ITCB members, or not.

- The TMB believes that its earlier observations, included in the second comprehensive report should be recalled once again, since they remained valid and apply to the situation at present as well. In its remarks, "[t]he TMB observed that the right of any Member to initiate anti-dumping proceedings and to take the necessary actions as a result of such investigation was not being contested. [...] [T]he TMB noted the concerns of the ITCB members that the targeting of restrained products had had the effect of causing double jeopardy to the exporting countries concerned and of impairing their rights to utilize access under the ATC. In the view of the TMB, protracted or repeated investigations, even if they do not result in the imposition of provisional or final anti-dumping duties, can cause serious uncertainties to the exporters of the products in question. Keeping in mind the concerns, as above, the Members concerned should act with extreme care when having recourse to anti-dumping proceedings and also in deciding to take actions as a result of such investigations."[294]

554. Recalling that in its communication, the European Communities stated, *inter alia*, that "... moderation of use of anti-dumping remedies is to be expected from all countries some of which are now frequently invoking this remedy", the TMB notes that during Stage 3 of the integration process a number of WTO Members have introduced preliminary and/or definitive anti-dumping measures on textile and clothing products. A list of such measures is contained in Table 11.

Table 11

PRELIMINARY AND DEFINITIVE ANTI-DUMPING MEASURES APPLIED ON TEXTILE AND CLOTHING PRODUCTS IN THE PERIOD 2002-JUNE 2004

REPORTING MEMBER	PRODUCT	COUNTRY OR CUSTOMS TERRITORY AFFECTED	DATE OF THE NOTIFICATION
European Communities	Polyester yarn	India	September 2002
European Communities	Cellulose yarn	Lithuania; United States	October 2002
India	Acrylic fibre Yarns MMF	Italy Korea; Turkey	October 2002
South Africa	Indigo blue fabric	China; Hong Kong, China	October 2002
United States	Polyester fibre	Korea	October 2002

[294] See G/L/459, paragraph 570.

REPORTING MEMBER	PRODUCT	COUNTRY OR CUSTOMS TERRITORY AFFECTED	DATE OF THE NOTIFICATION
China	Polyester fibre	Korea	October 2002
European Communities	Sacks and bags MMF Footwear w/textile uppers Twine MMF Twine polypropylene Polyester yarn	China; India; Indonesia; Thailand China China; Indonesia Czech Republic; Hungary; Poland India	October 2002
Turkey	Polyester fibre	Chinese Taipei; India; Thailand	April 2003
United States	Polyester fibre	Korea	May-June 2003
European Communities	Synthetic fibre ropes	India	July 2003
India	Acrylic fibre Polyester fibres	Brazil; Bulgaria; Germany; United Kingdom Chinese Taipei; Korea; Malaysia, Thailand	August 2003
Turkey	Polyester fibre	Chinese Taipei; India; Thailand	September 2003
European Communities	Polyester yarn	China; Chinese Taipei; Indonesia; Malaysia; Thailand	October 2003
United States	Polyester fibre	Korea	October 2003
European Communities	Cotton bed-linen Polyester fibre	Chinese Taipei; India; China; Korea	January 2004
European Communities	Polyester yarn	Chinese Taipei; Korea	February 2004
South Africa	Bed linen	Malawi	February 2004
United States	Polyester yarn	Korea	February 2004
European Communities	Sacks and bags MMF	China; India; Indonesia; Thailand	March 2004
European Communities	Cotton-type bed linen	Pakistan	April 2004

Sources: G/ADP/N monthly series

555. The Ministerial Decision on Implementation-Related Issues and Concerns, adopted in Doha, states, *inter alia*, that "Members will exercise particular consideration before initiating investigations in the context of antidumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the Agreement for a period of two years following full integration of this Agreement into the WTO."[295]

[295] See WT/MIN(01)17.

556. In July 2003, a group of developing Members[296] submitted a communication to the General Council with the following title: "Anti-dumping actions in the area of textiles and clothing. Proposal for a specific short-term dispensation in favour of developing Members following full integration of the sector into GATT from January 2005."[297] The communication summarizes the experience gained with anti-dumping actions in this area and the implications from the legacy of quota restrictions. After having provided this overview, the communication states, *inter alia*, that "[i]t is widely acknowledged that the very initiation of investigations into alleged dumping cause considerable adverse effects on exporters and businesses concerned. As witnessed from experience with the spate of investigations in the field of textiles and clothing [...] these investigations are often prompted by interested parties to preserve their corner of the market. In the event, it is in the interest of both exporting and importing Members as well as the efficiency of the multilateral trading system that an appropriate period of time is provided for business operators to compete in the market in a meaningful way and to allow trading conditions to adjust to the normal business environment. It is also important that developing countries are protected against un-warranted recourse to trade remedy actions, so that market access so painstakingly secured is not undermined." The communication goes on to propose the following:

> "In light of:
>
> - the considerations brought out in [the communication];
> - the lack of progressivity in phasing out quota restrictions by the restraining Members;
> - various Ministerial decisions and declarations referred to in [the communication]; and
> - the need to take into account the interests of developing Members especially with regard to providing them with the security of market access and protection against wrongful recourse to trade remedy actions;
>
> it is proposed that the General Council recommend to the [Cancún] Ministerial Conference to decide that:
>
> 'With a view to allowing trade in textiles and clothing to adjust to normal trading conditions free of the influence of the long-standing quota regime following the full integration of the sector into the WTO in accordance with the Agreement on Textiles and Clothing, developed Members shall implement a grace period of two years during which no investigations in the context of anti-dumping remedies on imports of textile and clothing products from developing countries shall be initiated.'"

557. In the discussion of this proposal in the General Council, some delegations indicated that they supported it, while others stated that they could not go along with it. As a result, the General Council could not take any decision on the proposal.

558. With regard to another area of measures, namely subsidies and countervailing measures specifically mentioned in the language of Article 7.1(b), the TMB is aware that, in a few cases, preliminary or final actions have been taken during Stage 3 of the integration process, affecting products covered by the ATC. A list of these cases is provided in Table 12.

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[296] Costa Rica; Guatemala; Hong Kong, China; India; Indonesia; Macao, China; Maldives; Pakistan; People's Republic of China; Thailand and Vietnam (this latter being an observer to the WTO).

[297] See WT/GC/W/502.

Table 12

PRELIMINARY AND FINAL ACTIONS ON COUNTERVAILING DUTIES APPLIED ON TEXTILE AND CLOTHING PRODUCTS IN THE PERIOD 2002-JUNE 2004

REPORTING MEMBER	PRODUCT	COUNTRY OR CUSTOMS TERRITORY AFFECTED	DATE OF THE NOTIFICATION
European Communities	Polyester yarn	India	October 2002
European Communities	Polyester yarn	India; Indonesia	Nov-Dec 2002
European Communities	Cotton bed-linen	India	January 2003
European Communities	Cotton bed-linen	India	February 2004

Sources: G/SCM/N monthly series.

559. While the TMB is not only not expected, but also, lacking the necessary technical knowledge, is unable to comment on substantive aspects of this matter, it is worth noting that in parallel with certain actions taken by the European Communities on imports of cotton bed-linen from India under the Anti-Dumping Agreement[298], or almost immediately following them, the EC had also recourse to provisions of the Agreement on Subsidies and Countervailing Measures in relation to practically the same product and the same exporting Member.

560. The TMB is aware that with reference to the Agreement on Subsidies and Countervailing Measures, the United States requested the WTO Secretariat to perform an export competitiveness calculation with respect to India's textile and clothing sector.[299] The Secretariat performed these calculations[300] and in May 2003, the United States informed the Committee on Subsidies and Countervailing Measures that the United States expected to enter into bilateral discussions with India with respect to the calculations performed.

561. Finally, no information has been brought to the TMB's attention with regard to issues related to "the application of policies relating to fair and equitable trading conditions as regards [...] protection of intellectual property rights."

3. Information available regarding the implementation of the provisions of Article 7.1(c)

562. Following the language of Article 7.1(c), "[a]s 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 [...] avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons."

563. As already noted, during the period of implementation of Stage 3 of the integration process, the TMB has not received any notification or information from Members, pursuant to either Article 7.2 or Article 7.3 that would have been related to the implementation of the provisions of Article 7.1(c). Also, no information has been brought to the TMB's attention regarding measures

[298] See paragraphs 549, 551 and 552 above, as well as Table 11.
[299] See G/SCM/M/46 and G/SCM/103.
[300] See G/SCM/103/Add.1.

taken during Stage 3 for general trade policy reasons which would have constituted a breach of obligations specified in Article 7.1(c).

V. OTHER MATTERS

564. This section of the report addresses the following matters:

- continuous autonomous industrial adjustment and increased competition in Members' markets in the sense of Article 1.5;
- elimination of restrictions on imports from certain non-WTO Members, while keeping them in place *vis-à-vis* WTO Members.

A. AUTONOMOUS INDUSTRIAL ADJUSTMENT AND INCREASED COMPETITION IN MEMBERS' MARKETS

565. Article 1.5 provides that "[i]n 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."

1. Background

566. In its first comprehensive report, the TMB had stated the following:

> "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. [...] 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 [Colombia and the European Communities] provided replies to this specific issue. Apart from the indications [given by the two Members], 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."[301]

567. In the conclusions of its first major review adopted by the CTG, in February 1998, it was reflected, *inter alia*, that in the Council's discussion of the integration process, "[an] area of concern to some Members was the lack of information on the process of autonomous industrial adjustment mentioned in Article 1.5 of the ATC in order to facilitate integration. Such adjustment would be all the more necessary with integration being effectively left to the last three years of the transition". [...] "With respect to autonomous industrial adjustment in terms of Article 1.5, another Member noted that there had been substantial adjustment under the MFA and it was continuing at the present time. Some Members had provided information in this regard to the TMB, which was noted in its report." [...] "The Council recalled that Members should allow for continuous autonomous industrial adjustment and increased competition in their markets in order to facilitate the integration of the textiles and clothing sector into GATT 1994. The Council noted that further information in this regard would facilitate the review of progress."[302]

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[301] See G/L/179, paragraphs 74 to 77
[302] See G/L/224, paragraphs 10, 11 and 15.

568. In the context of the preparation of its second comprehensive report, the TMB had invited Members to provide information, *inter alia*, in relation to developments in allowing for continuous autonomous industrial adjustment and increased competition in their markets. Five contributions had been received (respectively, from Canada, the European Communities, Japan, Turkey and the United States) and the communication received from ITCB members also commented upon this topic. All these communications were reproduced in full in the second comprehensive report.[303] In its related additional comments and observations, the TMB had stated, *inter alia*, the following:

- [...]

  "[S]ome of the replies received were more detailed than others; certain included aspects which were not included in others; some focused more on the internal adjustment efforts, while others paid, at least, similar attention to bring out facts which were designed to demonstrate that competition had significantly increased in their respective markets. It appeared from the reply received from the ITCB members that they considered Article 1.5 as applicable, in essence, by the restraining Members in order to facilitate the integration of the textiles and clothing sector into GATT 1994, whereas some other Members may consider that this Article was of more general application."

  [...]

- "It would appear that the replies and information provided by the three Members maintaining restrictions under Article 2.1 contained some elements which were more or less common and were included in each contribution such as:

  - in particular, during the period of ATC implementation, imports have increased significantly [...];

  - employment has continuously decreased in the sector, and it would appear that this could be attributed only in part to new investments made and more modern technology applied;

  - the closing of a number of textile and clothing plants as a result of problems encountered in terms of efficiency and competitiveness combined with the effects of increased competition resulting from imports;

  - these trends notwithstanding, the textiles and clothing sector improved its competitivity at an international level as a result of its specialization in the high added value end of the sector and an active export strategy; the remaining primary textile firms have been relatively successful in increasing their competitiveness, in part through exporting, in capital intensive sectors and the clothing industry has also adjusted by shifting its production to export markets, also having a favourable effect on employment."

- "It is interesting to note that neither of these communications made any reference to the trend of increasing recourse to important offshore assembly operations, in particular to nearby countries, which phenomenon in itself can be a manifestation of ongoing adjustment and may have different implications on different branches or production segments (for instance, to promote the textiles industry as opposed to the clothing industry). It is equally noteworthy that, in reply to the request for information formulated in very general terms, the information provided remained also

[303] See G/L/459, paragraphs 607 to 612.

at a general, aggregate level and did not offer more insight into trends experienced by or affecting the different branches of the textiles and clothing sector."

- "It would also appear that several other Members could also have reported some developments in the area of structural adjustment and/or lifting certain barriers to potentially increased competition in their markets. For the sake of examples, one could refer to press reports according to which several Members have worked out or are working on specific industry, production and marketing strategies to prepare their respective industries for the period succeeding the ATC."

- "All in all, apart from the observations reflected in the previous paragraphs, the TMB does not have sufficient information at its disposal to make a more thorough analysis and assessment on the extent to which autonomous industrial adjustment and increased competition in Members' markets, in the sense of Article 1.5, has been achieved, though it appeared from the information provided that increased competition seemed to have taken place in Canada, the European Communities and the United States. [...]"[304]

569. In the second comprehensive report, the TMB recommended to the Council for Trade in Goods that the Council:

- "draw, once again, the attention of Members to the provisions of Article 1.5;

- re-emphasize the need for continued autonomous industrial adjustment and increased competition in Members' markets in order to facilitate integration and to ensure the smooth transition to the sole application of the GATT 1994 rules and disciplines;

- encourage Members to provide, from time to time, information to the TMB on progress achieved in this area."[305]

570. The conclusions of the second major review conducted by the Council for Trade in Goods contain, *inter alia*, the following:

"[...] ITCB members and some other developing Members [...] emphasized that, whereas Article 1.5 of the ATC required Members to allow for continuous autonomous adjustment and increased competition in their markets to facilitate the integration process, the restraining Members had, in fact, impeded this."

[...]

"With respect to autonomous industrial adjustment, the developed, restraining Members considered that this process was proceeding well in order to ensure the smooth, final re-integration steps. This was witnessed by decreases in employment, increases in imports and in the market share held by developing Members and changes in production and in products. It was also noted that the obligations in Article 1.5 applied to both developed and developing Members, though in different ways."

[...]

[304] G/L/459, paragraphs 614 to 617.
[305] Ibid., paragraph 707.

"Based on the discussions, which are set out in detail in the reports on the meetings, the Council noted a number of considerations and arrived at certain conclusions, as follows:

[...]

- that Members should allow for continuous autonomous industrial adjustment and increased competition in their markets in order to facilitate the integration of the textiles and clothing sector into GATT 1994 and encouraged Members to provide information to the TMB, from time to time, on relevant developments in this area."[306]

2. Developments reported during Stage 3 of the integration process

571. Though, as indicated above, the CTG, *inter alia*, "[...] encouraged Members to provide information to the TMB, from time to time, on relevant developments in this area", the TMB has not received any information from any of the Members regarding this matter during the implementation of Stage 3. Against this background, in the context of the preparation of the present report, the TMB "invite[d] Members to submit notifications or information, as appropriate, in particular regarding the implementation by Members during the third stage [of the integration process] of the provisions of the ATC [*inter alia*] in relation to [...] developments in allowing for continuous autonomous industrial adjustment and increased competition in the Members' markets. [...]"[307]

572. Four communications received in response from Members touched upon aspects related to the implementation of the provisions of Article 1.5.

573. The communication from Canada contained the following:

"[...]

As a backdrop, opening the Canadian market to imports has required the Canadian textile and apparel industry to adjust, and to adjust significantly. In the mid seventies, the Canadian market was essentially supplied by domestic producers. At that time, Canada had over 350,000 textile and apparel workers. Today the sector employs 148,000 workers, producing to a considerable extent for the export market while maintaining less than a 50 per cent share of the domestic market. Apparel took the hardest hit: it lost 15 per cent of employment since 1990, the ATC base year, in a time period where overall employment in the economy increased 14 per cent. This transition has been difficult for both Canadian industry and labour. We expect this transition to continue and to continue to be difficult, but the path has been set out."

[...]

"On the textile front, Canada has traditionally maintained quotas on only few of its imports. Restrained imports of yarns and made-up textiles added up to less than 5 per cent in 1990. Over 85 per cent of fabrics were imported free of quota that year. Still, our industry has been adapting and developing markets for its products, to prepare for the new trading environment. In addition, this industry is adapting to intensified competition arising from regional and bilateral trade initiatives. Canada has also instituted a process for industry to petition on an ongoing basis for tariff relief on imported fabrics and yarns based on domestic availability. This process has led to significant duty reductions on imported fabric, further opening up Canada's market to all suppliers. [...]"

[306] See G/L/556.
[307] See G/TMB/30.

574. Turkey provided information, as follows;

> "Regarding developments in allowing for continuous autonomous industrial adjustment and increased competition in the Member's market (Article 1.5), Turkish textile and clothing producers have come under intense imports pressure for the items liberalized in the third stage of integration under the ATC. In 2002, especially knitwear, preparation and spinning of textile fibres, leather, fur, yarn, woven and the clothing industry as a whole have been negatively affected by the drastically increased imports as a result of the third stage of integration under the ATC."

575. The communication received from ITCB members stated, *inter alia*, that "[t]he TMB may wish to bring out [the] issue [that the restraining Members are denying the use of carry-forward facility in 2004] in its report, including, *inter alia*, with reference to Article 1.5 of the ATC which required Members to allow for continuous autonomous industrial adjustment and increased competition in their markets."

576. In its communication providing comments with respect to different specific issues raised in the communication from ITCB members, the United States stated, *inter alia*, the following:

> "The United States announced its integration schedule on 13 October 1994 for Phase 1, and 1 May 1995 for Phases 2, 3 and 4. It has abided by this schedule, and intends to continue to do so. ITCB members have frequently complained that the United States has not liberalized its system more quickly than is called for under the ATC. The US textile and apparel industry is being forced to undergo a major restructuring as a result of the commitments the United States made in the Uruguay Round, and a million jobs have been lost in the United States. While the United States intends to honour its commitments, it will not accelerate the integration schedule in the face of the serious conditions facing the US industry."

3. TMB's comments and observations

577. It has to be reiterated[308] that despite the encouragement of the Council for Trade in Goods for Members to provide information, from time to time, to the TMB on relevant developments in this area, no information has been addressed in this regard by any of the Members to the Body during the period of implementation of Stage 3 of the integration process. It was only at the request of the TMB for appropriate information in the context of the preparation of the present report that some communications were received that also touched upon certain aspects relevant in the context of Article 1.5. It should be noted that in terms of providing information on developments regarding autonomous industrial adjustment and increased competition in Members' markets, these communications were very brief, remained at the level of generalities and, without any doubt, contained fewer specific elements, if any, than the respective information provided to the Body when it had prepared the second comprehensive report. Therefore, on the basis of the information at its disposal, the TMB is simply not in a position to express any view regarding the implementation of Article 1.5 during the third stage of the integration process. One would assume, however, that adjustment in the sense of Article 1.5 has continued, as also reflected in the general statements received. This assumption notwithstanding, there is no basis for the TMB to assess whether such adjustment has been adequate, or not, in terms of preparing the respective industries for the competitive environment of the post-ATC regime.

578. In the second comprehensive report, the TMB had observed, *inter alia*, that "[it] would also appear that several [...] Members could [...] have reported some developments in the area of structural adjustment and/or lifting certain barriers to potentially increased competition in their markets. For the sake of examples, one could refer to press reports according to which several Members have worked

[308] See paragraph 571 above.

out or are working on specific industry, production and marketing strategies to prepare their respective industries for the period succeeding the ATC."[309] In the view of the TMB, this observation is even more valid at present when roughly five months remain before the expiry of the ATC.

579. With regard to some of the points raised by Members in their respective communications, the TMB believes that it is appropriate to offer a few related comments, as follows.

- Canada's statement according to which its "industry is adapting to intensified competition arising from regional and bilateral trade initiatives", is duly noted. It would also appear that the initiatives in question have also brought about increased business opportunities for certain segments of the Canadian industry.

- In the view of the TMB, Turkey was right in drawing attention to the linkage between the implementation of integration programmes under the ATC and developments in allowing for continuous autonomous industrial adjustment and increased competition in the market. This linkage is clearly established in the language of Article 1.5, though not entirely in the way in which Turkey presented its relevant information. In essence, Turkey stated that its industry had "come under intense import pressure" and, "as a whole [had] been negatively affected by the drastically increased imports as a result of the third stage of integration under the ATC". In the TMB's reading of the provisions of Article 1.5, increased competition in Members' markets should not only result from the liberalization implemented in any integration stage, but also from the continuous process of autonomous industrial adjustment that should go on "[i]n order to facilitate the integration of the textiles and clothing sector into GATT 1994", as stated in Article 1.5.

- Furthermore, Turkey mentioned several producers that experienced "intense import pressure", including some who do not appear to produce products falling under the coverage of the ATC, such as leather and fur, but whose products are, according to Turkey, linked to products covered by the ATC.

- The reference by the United States in its communication to the US textile and apparel industry undergoing a major restructuring is duly noted.

- Finally, in response to the observation made by ITCB members in their communication, it should be recalled that issues related to the carry-forward facility in 2004 are addressed in another section of this report.[310]

B. ELIMINATION OF RESTRICTIONS ON IMPORTS FROM CERTAIN NON-WTO MEMBERS WHILE MAINTAINING THEM ON WTO MEMBERS

580. The communication from ITCB members contained the following:

"Article 1.6 of the ATC prescribed that 'unless otherwise provided in [the ATC], its provisions shall not affect the rights and obligations of Members under the provisions of the WTO Agreement and [other] Multilateral Trade Agreements'. In other words, all GATT rights remain unaffected, save to the extent provided in the ATC. Contrarily, however, there have been several instances in which all EU quotas previously applying to non-WTO Members (Bosnia, Russia, Ukraine and Uzbekistan) have been abolished while, keeping them in place on WTO-Members; this in disregard of the fundamental MFN requirement that any

[309] See G/L/459, paragraph 616.
[310] See paragraphs 256 to 261 above.

> advantage or privilege granted to any country must immediately and unconditionally be extended to all WTO Members."

581. In its response to the TMB's request for clarifications and comments, the European Communities stated as follows:

> "As regards the elimination of quotas *vis-à-vis* non-WTO countries, it is noted that the ATC itself constitutes a derogation from the MFN as, by definition, the existence of different quotas imply a different treatment. It is also pointed out that the ATC does not contain any provision that would prevent restraining countries from adjusting the quotas applied *vis-à-vis* non-WTO countries, or, if that were the case, this would mean that over the period of validity of the ATC the quotas applied *vis-à-vis* non-WTO countries would have to remain frozen. In the absence of any clear criteria for interpretation as to what adjustments of such quotas may or may not be envisaged, the EU considers that it has a very wide margin of appreciation in conducting such adjustments, including their possible elimination, without any need to extend such benefits to other countries, all the more since the EU has been granting such benefits to countries which have entered into market access commitments that go far beyond what most restrained countries have bound through tariffs in WTO."

582. The report adopted by the Council for Trade in Goods on the major review of the implementation of the ATC during the second stage of the integration process included, *inter alia*, the following with respect to this matter:

> "On a number of [...] topics examined by the Council, the understandings and positions held by groups of Members differed substantially and, thus, it was not possible to arrive at agreed conclusions. [...] In respect of Article 1.6, ITCB Members and some other developing Members referred to instances during the second stage of the ATC implementation process in which a restraining Member had eliminated quota restrictions on certain non-WTO Member countries with respect to textile and clothing products, while continuing to apply such restrictions on WTO Members. This was inconsistent with that Member's obligation under GATT 1994, especially Articles I and XIII, and therefore, impaired the rights of WTO Members whose exports to that Member had been restrained by quotas. They pointed out that Article 1.6 of the ATC provided that 'Unless otherwise provided in this Agreement, its provisions shall not affect the rights and obligations of Members under the provisions of the WTO Agreement and the Multilateral Trade Agreements'; therefore, the rules of GATT 1994 applied unless the ATC contained a different rule, which in this instance was not the case. The developed, restraining Members noted that the ATC was clearly an exception to the MFN principle; it allowed for the discriminatory elimination of restrictions on WTO Members. Therefore, one could not make an argument that such a procedure would not be possible in cases involving non-Members. Also, there was no requirement under the ATC to provide similar treatment to WTO Members and to non-WTO Members."[311]

583. It should also be recalled that ITCB members had already raised the same matter and concerns in their communication addressed to the TMB in the context of its preparation of the second comprehensive report.[312] In its related observations, the TMB had stated, *inter alia*, the following:

> "Turning to the central issue raised, i.e. to the legal arguments made and the possible legal implications of such measures, the TMB recognized that the issue raised questions as to whether rights and obligations of WTO Members had been affected under the WTO Agreement, in particular under GATT 1994. The argument made by the ITCB members claimed breach of obligations under GATT 1994 and linked them to the provisions of

[311] See G/L/556, paragraphs 23 and 24.
[312] See G/L/459, paragraphs 641 to 643.

Article 1.6 (of the ATC). The TMB observed in this regard that none of the provisions of the ATC, including its Article 1.6, authorized the TMB to consider and to pronounce itself on whether rights and obligations of Members had been affected, or not, under the provisions of GATT 1994. [...]"[313]

584. Reflecting further on this issue in the context of the preparation of the present report, the TMB observed that, as a result of the elimination of restrictions on imports from non-WTO Members of products covered by the ATC, WTO Members were, in fact, put at a disadvantage *vis-à-vis* certain non-WTO Members, whereas it could have been expected that, being Members of the WTO, this would at the minimum not have been the case. At the same time the TMB observed that it could not find a provision in the ATC which would allow it to pronounce itself or draw conclusions on the rights and obligations of WTO Members under the provisions of GATT 1994.

VI. ISSUES RELATED TO ASPECTS OF ATC IMPLEMENTATION IN HIGHER WTO BODIES

A. MINISTERIAL CONFERENCE AND THE FOLLOW-UP OF ITS RESPECTIVE DECISION

1. Background: the Doha Ministerial Decision on Implementation-Related Issues and Concerns

585. On 14 November 2001, the Doha Ministerial Conference adopted a Decision on Implementation-Related Issues and Concerns[314] which included a section on ATC implementation.[315] In that Decision, Ministers reaffirmed "the commitment to full and faithful implementation of the Agreement on Textiles and Clothing," and agreed: "(1) that the provisions of the Agreement relating to the early integration of products and the elimination of quota restrictions should be effectively utilized; (2) that Members will exercise particular consideration before initiating investigations in the context of antidumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the Agreement for a period of two years following full integration of this Agreement into the WTO; [and] (3) that without prejudice to their rights and obligations, Members shall notify any changes in their rules of origin concerning products falling under the coverage of the Agreement to the Committee on Rules of Origin which may decide to examine them." The Decision also requested the Council for Trade in Goods to examine two proposals as follows: "[(1)] that when calculating the quota levels for small suppliers for the remaining years of the Agreement, Members will apply the most favourable methodology available in respect of those Members under the growth-on-growth provisions from the beginning of the implementation period; extend the same treatment to least developed countries; and, where possible, eliminate quota restrictions on imports of such Members; [and (2)] that Members will calculate the quota levels for the remaining years of the Agreement with respect to other restrained Members as if implementation of the growth-on-growth provision for Stage 3 had been advanced to 1 January 2000." The Decision also requested the Council for Trade in Goods to make recommendations to the General Council by 31 July 2002 for appropriate action.

2. Subsequent developments in the Council for Trade in Goods and the General Council

586. At the meeting of the Council for Trade in Goods on 22-27 March 2002[316], the Council Chairman proposed, *inter alia*, that, in order to fulfil the mandate given by Ministers, as mentioned above, this be put as an item on the agenda of the next CTG meeting to be held on 2 and 3 May 2002 as well as subsequent meetings, as required. At that May 2002 meeting of the CTG, the Chairman

[313] G/L/459, paragraph 646.
[314] See WT/MIN(01)/17.
[315] See also paragraph 41 above.
[316] See G/C/M/59.

reported that he had conducted informal consultations in order to prepare for the examination of the proposals contained in the Decision. During those informal consultations, *inter alia*, the United States had requested that a bibliography of articles, books and papers related to trade and industrial development as well as policies affecting textiles and clothing be prepared by the Secretariat. In addition, a communication had been provided by Hong Kong, China on behalf of the ITCB members that are also Members or observers of the WTO. The representative of Hong Kong, China also recalled that he had made a request for further statistical data relating to textile and clothing imports into the United States, the European Communities and Canada from unrestrained WTO Members. The Chairman proposed a programme of five one-day meetings for informal consultations in order to further examine these issues as well as other topics related to the ATC. After an initial discussion of the two proposals, the Council took note of the statements made and accepted the Chairman's programme of informal consultations. At subsequent meetings of the CTG in May and June 2002 the Chairman made progress reports of the informal discussions which had taken place, and Members continued their examination of the various aspects of the proposals, also on the basis of further submissions made by certain Members. At the 22, 23 and 30 July 2002 meeting of the CTG, the Chairman reported that this item had been on the agenda of four formal sessions, in May, June and July, and had been discussed at eight informal consultations over this period. A great deal of documentation had been provided in support of the argumentation made in the meetings, both in the form of statistics on trade developments during the ATC period, as well as detailed submissions setting out the position of the different Members. It had become clear from the outset that there were fundamental differences in the views and understandings of the restraining Members and those of the developing, exporting Members on both the contents of the report and on recommendations. A great deal of effort went into trying to present these views in a factual and balanced manner in a draft report. However, discussion of the draft text led to repeated demands for further points to be included which, in turn, resulted in demands for balancing texts. The draft report was rewritten repeatedly to accommodate these requests, however, the required consensus on the report and on recommendations did not take shape. In view of all of this, the Chairman saw no alternative but to conclude the exercise without results. Consequently, he was not in a position to put before the CTG a draft report with recommendations to the General Council. This would be his statement to the General Council at its next meeting and he proposed that delegations reserve their views on this matter for the General Council meeting. The CTG so agreed.

587. On 31 July 2002, the Chairman of the CTG reported to the General Council, *inter alia*, that the required consensus on the report and on the recommendations had not been reached. In view of this, there had been no alternative but to conclude the exercise without results and, consequently, he was not in a position to present a report with recommendations to the General Council. The Members had a further exchange of views on the proposals and the possible need for their being implemented. However, the General Council Chairman said it was clear from the discussion that although, in accordance with the mandate received, this matter had been examined in the CTG, it had not been possible to formulate any recommendations for the General Council by 31 July 2002. Second, it was clear that the matter continued to be of great concern to a substantial number of delegations, from both importing and exporting countries. Third, it was apparent that there were still fundamental differences between the views and understandings of the importing countries and of the exporting developing countries with respect to the mandate and possible recommendations. Fourth, delegations had expressed very differing views on how best to deal with this issue, and Members had clearly not reached a consensus on how to resolve it. In view of this situation and having examined various possible options, he proposed that the General Council take note of the statement by the Chairman of the CTG and of those by delegations, on the understanding that this would not prejudice the various positions held by Members, which would be duly reflected in the minutes of the meeting.[317] The General Council so agreed. As of the adoption of the present report, no further debate had been held, however, in relation to the two proposals.

[317] See WT/GC/M/75 and WT/GC/M/75/Corr.2.

B. GENERAL COUNCIL

1. Widening of EC textile quota restrictions following accession of new member States

588. At the General Council meeting on 21 October 2003, the representative of India, on behalf of members of the International Textiles and Clothing Bureau that are also Members or observers of the WTO, drew attention to an Act published in the Official Journal of the European Union, dated 23 September 2003, entitled "Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded". Paragraph 7 of Article 6 of this Act stipulated that "[a]s from the date of accession, the new Member States shall apply the bilateral textile agreements and arrangements concluded by the Community with third countries. The quantitative restrictions applied by the Community on imports of textile and clothing products shall be adjusted to take into account the accession of the new Member States to the Community. To that effect, amendments to the bilateral agreements and arrangements referred to above may be negotiated by the Community with the third countries concerned prior to the date of accession. Should the amendments to the bilateral agreements and arrangements not have entered into force by the date of accession, the Community shall make necessary adjustments to its rules for the import of textile and clothing products from third countries to take into account the accession of the new Member States to the Community." According to the representative of India, this matter was of great importance, both because of its systemic implications for the multilateral trading system, and the economic and practical considerations related to it. In this regard, he noted that this Act was to become effective as from 1 May 2004, i.e. just eight months before the scheduled elimination of all quantitative restrictions on 1 January 2005 pursuant to the ATC. His delegation would be appreciative if the Community could inform the General Council of its plans and provide further details. The representative of the European Communities said that his delegation had noted India's questions, which would be conveyed to Brussels and answered in due course. The representative of India recalled its request under other business at the December 2004 meeting of the General Council. The representative of the European Communities answered that he was not in a position to provide further details on this matter at this time, explaining that only the EU Council could take a decision on this matter, and that such decision was only expected in the coming weeks.[318]

2. Developing Members' concern about potential reduction in market (quota) access in 2004

589. At the July 2003 meeting of the General Council, a number of developing-country Members brought to the General Council's notice what they perceived as an important market access problem in the textiles and clothing sector, which would adversely impact developing countries in 2004, i.e. a loss of market access on account of the inability to use "carry forward" in 2004. The co-sponsors of this proposal recommended that developed-country Members take measures to ensure that there would be no narrowing of quota access to the textiles and clothing exports in 2004. Following the discussion that took place among Members, the Chairman of the Council concluded that the divergences of views expressed meant that the General Council was not in a position to take a decision as had been requested by the co-sponsors. He therefore suggested, and the Council agreed, that note would be taken of the statements, and that the Chairman would hold consultations as to the best way to deal with this matter. At the December 2003 meeting of the General Council, the Chairman informed Members that he had held consultations with the interested parties with the aim of exploring this matter further, as well as possible means to meet the concerns raised. Further statements were made by various Members during the meeting. However the Chairman concluded by stating that it was clear that no agreement existed among Members on this issue, and there was thus

[318] Subsequently this matter was raised by several members of the TMB in a communication sent to the Body in May 2004. See paragraphs 325 to 334 above.

no basis for a General Council decision on it. He encouraged the proponents and the restraining Members to continue their dialogue to see if there were other possibilities for addressing these concerns.[319]

3. Anti-dumping actions in the area of textiles and clothing – Proposal for a specific short-term dispensation in favour of developing Members following full integration of the sector into GATT from January 2005

590. At the July 2003 meeting of the General Council, a number of developing-country Members jointly made a submission with a view to bringing out the trend and impact of investigations into allegations of dumping in textiles and clothing on developing-country Members' exports. The co-sponsors of the paper, therefore, proposed that the General Council recommend to Ministers that they decide as follows: "With a view to allowing trade in textiles and clothing to adjust to normal trading conditions free of the influence of the long-standing quota regime following the full integration of the sector into the WTO in accordance with the Agreement on Textiles and Clothing, developed Members shall implement a grace period of two years during which no investigations in the context of anti-dumping remedies on imports of textiles and clothing products from developing countries shall be initiated." After an exchange of view by Members, the Chairman concluded by stating that it appeared that some delegations had indicated that they could support the proposal, while others had said they could not go along with it. As a result, it did not seem that the General Council could take a decision on this proposal at the July 2003 meeting. The General Council, therefore, took note of all the statements on this matter.

C. DISPUTE SETTLEMENT BODY

591. During the third stage of the integration process, no dispute has been referred to the Dispute Settlement Body in relation to the implementation of provisions of the ATC. The DSB considered, however, two disputes which concerned measures affecting certain products covered by the ATC (*European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*[320]; *and United States – Rules of Origin for Textiles and Apparel Products.*[321] In addition, the systemic importance and potential impact on market access conditions of, *inter alia*, textile and clothing products of another dispute (*European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*[322]*)* should be also noted.

D. COUNCIL FOR TRADE IN GOODS

1. Conclusion of the second major review

592. The CTG started its major review of the implementation of the ATC during the second stage of the integration process at its meeting of 27 September 2001 but, in view of the fact that important gaps in the understandings of the participants remained to be bridged, could not finalize it before the end of 2001, the deadline specified in Article 8.11 of the ATC. The review, therefore, continued in 2002.[323] At the meeting of the Council for Trade in Goods on 22 and 27 March 2002, the CTG Chairman informed the Council that the consultations with a view to preparing a report for consideration by the CTG had resumed. Discussions had been intensive, focusing mainly on the subject areas where it might have been possible to reach certain conclusions but, in spite of a great deal of effort on all sides, it had not been possible to bridge the gaps on some of the key issues. He recommended, however, that consultations should continue to arrive at a consensus report for the

[319] For the TMB's comments regarding this matter, see paragraphs 256 to 261 above.
[320] See paragraphs 549 to 551 above.
[321] See paragraphs 453 to 456 above.
[322] See WT/DS246/R and WT/DS246/AB/R.
[323] See also paragraph 42 above.

Council to consider. The Council agreed to this proposal. Consultations continued and proved difficult, the CTG Chairman making interim reports on his consultations at the Council meetings on 2 and 7 May, 23 and 24 May and 31 June 2002. At the CTG meeting on 22, 23 and 30 July 2002, the CTG Chairman presented a draft report on the major review of the implementation of the ATC during the second stage of the implementation process for consideration by the Council. The Council took note of the statements made and adopted the report.[324]

593. In this report, the Council noted a number of considerations and arrived at certain conclusions, as follows:

- the reaffirmation by all Members of their commitment to achieve the full and faithful implementation of the ATC by 1 January 2005;

- the importance of the full integration of this sector into WTO rules and disciplines by 1 January 2005 in view of the significance of trade in textile and clothing products as an important source of employment and export earnings for the economies of many Members, in particular, for developing and least-developed country Members;

- the declining trend with respect to the application of the transitional safeguard mechanism during the second stage; while recognizing that Members may resort to the safeguard provisions of the ATC during its final years, called upon all Members to apply it as sparingly as possible, consistently with the provisions of Article 6 and the effective implementation of the integration process under the Agreement;

- the views expressed by Members with regard to the implementation of ATC provisions in favour of small suppliers, new entrants, cotton-producing exporting Members and least-developed country Members and reaffirmed the importance of full implementation of those provisions;

- the views expressed by Members with respect to problems relating to circumvention of the ATC; reiterated the importance of full cooperation in addressing these problems consistent with the provisions of Article 5 and emphasized the need for any remedies to be proportionate to the problem;

- the views expressed recalled the provisions of Article 7 and called on all Members, as part of the integration process and with reference to the specific commitments undertaken as a result of the Uruguay Round, to take actions to abide by GATT 1994 rules and disciplines so as to achieve, *inter alia*, improved market access;

- the appreciation for the comprehensive report prepared by the TMB on the implementation of the ATC in the second stage and stressed the need for continued supervision by the TMB of the implementation of the ATC during the third stage;

- the importance of maintaining full transparency in all aspects of the implementation process and of facilitating the examination by the TMB of all measures taken under this Agreement, and called upon all Members to comply with all ATC notification requirements in a complete and timely manner;

- the importance of the Council overseeing and regularly evaluating the progress, in accordance with Article IV.5 of the WTO Agreement and Article 8 of the ATC, of the functioning of the ATC, whose implementation is being supervised by the TMB;

[324] See G/L/556.

- that Members should allow for continuous autonomous industrial adjustment and increased competition in their markets in order to facilitate the integration of the textiles and clothing sector into GATT 1994 and encouraged Members to provide information to the TMB, from time to time, on relevant developments in this area.

594. On a number of other topics examined by the Council the understandings and positions held by groups of Members differed substantially and, thus, it was not possible to arrive at agreed conclusions. With respect to Article 1.6, the question of the elimination of quota restrictions on certain non-WTO Member countries with respect to textile and clothing products, while continuing to apply such restrictions on WTO Members was raised. In relation to Article 2.4, the introduction of new restrictions on imports of textile and clothing products from a number of countries, in the context of implementing a customs union, was questioned, as well as the imposition of a restriction by a developed, restraining Member on another Member's exports of cotton and man-made fibre underwear. Also, reference was made and concerns raised with respect to the failure of a restraining Member to notify the elimination of visa arrangements in respect of products to be integrated in Stage 3, as well as to situations involving the impairment of access due to changes in rules of origin and to certain related administrative formalities and to the use of anti-dumping investigations and measures on restrained products.

2. Doha Ministerial Decision on Implementation-Related Issues and Concerns: request for the CTG to examine proposals contained in paragraphs 4.4 and 4.5 relating to the Agreement on Textiles and Clothing

595. The Council for Trade in Goods examined the proposals made by Ministers in Doha, contained in paragraphs 4.4 and 4.5 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns at its meetings on 22 and 27 March 2002, 2 and 7 May 2002 and 22, 23 and 30 July 2002. In addition, the Chairman held a series of informal consultations on this issue and made progress reports, in addition, at the CTG meetings on 22 and 24 May and 13 June 2002. For more details, see paragraph 586 above.

3. The CTG's oversight function pursuant to Article IV of the Agreement Establishing the WTO – Transparency regarding new restrictions on textile and clothing products commented on by the Textiles Monitoring Body

596. The presence of a bilateral restraint agreement between the United States and Turkey on Turkey's exports of one category of clothing, as a part of a wider understanding between these two countries, was first raised as an issue and put on the agenda of the CTG at the request of Hong Kong, China on behalf of a group of Members at the meeting of the CTG in February 2001. The concern related to the relationship of this bilateral restraint agreement to the ATC, and, more generally, to the TMB's responsibility for supervising the implementation of the ATC and the CTG's role in overseeing this process. This matter was considered by the CTG at several meetings in 2001 and, since this issue was also under discussion within the framework of the CTG's second major review of the implementation of the ATC and in light of the fact that the Council was considering its possible conclusions of the major review at the same time, it was agreed that at the CTG meeting on 4 December 2001 that it seemed appropriate to take up this matter taking into account the outcome of the major review.[325] This matter was further discussed or reported upon in the meetings of the CTG on 22 and 27 March, 2 and 7 May, 23 and 24 May, 13 June and 22, 23 and 30 July 2002. Some debate took place as to whether the issue should be considered only in the context of the major review or as a regular business item of the CTG and, in the latter case, that the Members concerned should be asked to rectify the measure which allegedly was in violation of another Member's obligations under the ATC or any WTO agreement. Consensus could not be reached however, on that issue. At the

[325] See paragraph 43 above.

meeting of the CTG on 22, 23 and 30 July 2002, the Chairman reported that he had conducted consultations on this issue and had discussed it with the interested parties. These discussions had resulted in a greater understanding on both sides on some of the issues involved. Consequently, he considered that it was not necessary to further pursue these consultations. The Council took note of the Chairman's report.

VII. COMPLIANCE WITH NOTIFICATION REQUIREMENTS UNDER THE ATC

597. The ATC contains a broad range of notification requirements to be complied with by Members. Most of these notification obligations are time-bound (such as the submission of integration programmes), while some others are ad hoc in nature and apply to cases when Members decide to have recourse to or to take actions under applicable provisions of the Agreement.

598. The TMB had suggested in its first comprehensive report 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".[326] In the conclusions adopted by the CTG in February 1998, as a result of the major review of the implementation of the ATC during the first stage of the integration process, in order "to ensure maximum transparency in the implementation of the ATC and to facilitate the work of the Textiles Monitoring Body, the Council called upon Members to comply, in a complete and timely manner, with all notification obligations of the ATC".[327]

599. In its second comprehensive report, the TMB had noted, *inter alia*, that Members' compliance with time-bound notification obligations under the ATC had not improved, rather it had further deteriorated over time. As a result, an increasing number of Members had not provided any notification when such notifications were due and there had also been an increase in the number of late notifications. The TMB had noted that such non-compliance with basic notification requirements, including the deadlines, may have legal implications on Members' rights and obligations arising from the ATC. Indeed, in a number of specific cases, despite the TMB's requests for clarifications and additional information from the Members concerned, no reply had been provided. Against this background, the TMB had emphasized that its efficient functioning and compliance with its supervisory role under the ATC was also dependent on the cooperation of Members.[328] The TMB had recommended to the CTG that the Council:

- "invite Members to fully comply with their respective notification obligations during the remaining period of ATC implementation;
- recall to Members the importance of cooperating with the TMB, in particular in providing it with the information that it had decided to seek from them;
- invite Members to submit timely notifications or information, as appropriate, to the TMB on all measures taken under the provisions of the ATC and also on actions that can affect ATC implementation and the rights and obligations arising from the Agreement;
- invite Members to refer to the TMB, if and when the need arises, the matters which can adversely affect their rights or they consider to be detrimental to their interests under the ATC."[329]

[326] See G/L/179, paragraph 330.
[327] See G/L/224, paragraph 61.
[328] See G/L/459, paragraphs 714, 715 and 718.
[329] Ibid., paragraph 719.

600. In response, in its report of the second major review, the CTG reaffirmed "the importance of maintaining full transparency in all aspects of the implementation process and of facilitating the examination by the TMB of all measures taken under this Agreement, and called upon all Members to comply with all ATC notification requirements in a complete and timely manner."[330]

601. Regarding developments in this area during the implementation of Stage 3 of the integration process, in the view of the TMB, though the global picture is a somewhat mixed one, overall it does not reveal significant improvements in Members' compliance with notification requirements, compared to previous stages of integration. This applies, in particular to the time-bound notification obligations, such as those relating to the final stage of integration. While it cannot be called into question that the entire textile and clothing sector shall stand integrated into GATT 1994 on 1 January 2005 irrespective of whether WTO Members have provided, or not, notifications regarding their respective final stage of integration, even such an unambiguous and irrevocable legal commitment cannot exempt Members from the obligation of providing notifications explicitly required under Articles 2.8(c) and 2.11. It is a telling indication in this regard that only one Member complied with this notification obligation within the time-frame specified by the ATC.

602. The TMB noted some positive changes in Members' attitude in providing clarifications and additional information, if specifically requested by the TMB, with respect to different aspects of notifications or communications already submitted to the Body. Such answers and clarifications were provided, in most cases, in a timely manner and the intention of seeking to address, to the extent possible, the specific issues raised by the TMB, could also be perceived. On the other hand, as also reflected in the relevant sections of the present report, Members have hardly provided notifications or information on certain measures or actions which either fall under a clearly defined notification obligation in the respective ATC provisions or have a bearing on the implementation of certain provisions of the Agreement. As an illustration of such measures, attention is drawn to the fact that at its meeting of April 2003, the TMB "recalled that, *inter alia*, Article 3.3 states that '[d]uring the duration of this Agreement, Members shall 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.' The TMB stressed the importance of the Members' adherence to the notification requirements contained in the ATC. It was also observed that measures or actions, other than those falling under the provisions of Article 3.3, having a bearing on the implementation of other provisions of the ATC should also be brought to the TMB's attention, for its information." At its meeting of September 2003, the TMB reverted to this matter. It observed that since the report of its meeting of April 2003 had been issued, no related notification or information from Members had been received. The TMB assumed, however, that agreements had been reached between certain Members or policies adopted and developed by some Members, falling under the provisions of Article 3.3 or having a bearing on the implementation of other provisions of the ATC, without being notified to any WTO body or brought to the attention of the TMB. The TMB, therefore, urged the Members concerned to provide to the TMB, pursuant to Article 3.3, any relevant notifications submitted to any other WTO bodies with respect to such agreements or policies and/or to bring to the TMB's attention those measures or actions having a bearing on the implementation of other provisions of the ATC, in particular on that of Article 2.[331] It should be noted that in spite of the TMB's repeated reminder, no follow-up notification or communication has been addressed to the Body. Some related information has been subsequently received, but only after the TMB, in the context of the preparation of this report, addressed specific requests with respect to certain measures to the Members directly concerned.

603. As was already the case with the second comprehensive report, some of the information and observations provided by Members, in reply to the TMB's general request, in the context of the

[330] See G/L/556, paragraph 22.
[331] See also paragraph 188 above.

preparation of the present report, revealed certain concerns, or were related to matters, that could have been formally referred to the TMB by the Members concerned under the applicable provisions of the ATC. The TMB cannot but repeat in this regard, what it had already stated in the second comprehensive report: while it appreciates all the contributions received and has decided to reflect them as fully as possible in the relevant sections of this report, it observes that providing such views and comments is not a substitute for, and does not amount to, a formal proceeding that can be initiated under the respective provisions of the ATC.[332]

VIII. FUNCTIONS OF THE TMB AND WORK CARRIED OUT

604. As defined in 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.

605. Article 8.1 also specifies that "[t]he TMB shall consist of a Chairman and ten members. Its membership shall be balanced and broadly representative of the Members and shall provide for rotation of its members at appropriate intervals. The members shall be appointed by Members designated by the Council for Trade in Goods to serve on the TMB [...]." The composition of the TMB for the third stage of the implementation process (2002-2004) was decided by the General Council on 20 December 2001.[333] Mr András Szepesi was reappointed Chairman of the TMB by the General Council for a period of four years (2001-2004) on 15 December 2000.[334] The list of TMB members, alternates and non-participating observers as well as successive changes, are reflected in the reports of the TMB.

A. DISCHARGING FUNCTIONS ON AN AD PERSONAM BASIS

1. TMB working procedures

606. Article 8.1 of the ATC states, furthermore, that TMB members discharge their function on an *ad personam* basis. The working procedures adopted by the TMB specify that "[i]n 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 organizations 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."[335]

2. Decision of the Council for Trade in Goods

607. Following the proposal made by the TMB, the Council for Trade in Goods adopted, on 12 February 1997, 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."[336]

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[332] See G/L/459, paragraph 717.
[333] See WT/L/443.
[334] See WT/GC/M/61.
[335] See G/TMB/R/1, Annex.
[336] See G/C/W/20/Rev.1.

3. Code of conduct adopted by the Dispute Settlement Body

608. In December 1996, the TMB took note of the decision of the Dispute Settlement Body[337] on 3 December 1996 to adopt the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes[338], 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.

B. NUMBER OF MEETINGS; ISSUES HANDLED BY THE TMB

609. During the period 1 January 2002 to 21 July 2004, the TMB held 28 meetings, nine of which lasted for more than one day. The issues referred to the TMB as well as the TMB's actions with respect to them are addressed in detail in this comprehensive report. During the period under review, the TMB, *inter alia*, completed its review of the Stage 3 integration programmes notified by Members as well as all the notifications received regarding the final stage of integration, to be implemented on 1 January 2005. Particular attention has been paid by the TMB during the same period to the consideration and review of all the notifications addressed to it following the accession of new Members to the WTO (notifications under Article 2.1 and 2.2, 3.1 and 3.2(b), 2.17 etc). Two transitional safeguard measures agreed between the Members concerned, pursuant to Article 6.9, were also subject of a detailed review by the TMB, in accordance with the requirements of applicable provisions of Article 6. The TMB's recent review, with reference to Article 2.21, of the introduction by the European Communities of quantitative restrictions in the markets of the newly acceded Member States, deserves to be mentioned too. A lot of time and energy has been also devoted to drawing up the present comprehensive report. It should be mentioned in this regard that, in accordance with the TMB's own established practice in drafting the previous comprehensive reports and keeping in mind that producing such a report required the fullest possible participation and contribution of all participants, not only members, but also alternates were afforded the opportunity to participate in full in the TMB's discussion leading to the adoption of the present report.

C. CIRCULATION OF REPORTS AND NOTIFICATIONS; DERESTRICTION OF DOCUMENTS

1. Circulation of reports

610. During the period considered, the TMB continued to adopt reports of each of its meetings, which were circulated to WTO Members for their information[339]. 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. The TMB's reports are, therefore, normally circulated to WTO Members about a month after each meeting of the TMB.

611. The TMB continued to submit reports annually pursuant to the decision adopted by the General Council on 15 November 1995 on the procedures for an annual overview of WTO activities and for reporting under the WTO (WT/L/105).[340]

2. Circulation of notifications

612. In conformity with its working procedures, 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

[337] See G/TMB/R/22, paragraph 17.
[338] See WT/DSB/RC/1.
[339] See G/TMB/R/85 to G/TMB/R/112.
[340] See G/L/475, G/L/574 and G/L/632, G/L/650.

may examine or review these notifications at a later stage. Notifications addressed to the TMB for review other than those above were, at the latest after such review, also circulated to WTO Members.

3. Derestriction

613. Following the decision adopted by the General Council at its meeting on 18 July 1996, the TMB had considered the question of the derestriction of its working documents at its September 1996 meeting. The TMB had 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". The TMB had taken note of the General Council's decision and decided that it would act in full compliance with it.

614. Since the General Council adopted, on 14 May 2002, another decision regarding the procedures for the circulation and derestriction of WTO documents, the TMB considered, during its meeting of May 2002, the implications of this decision on its working procedures. Noting that the decision of the General Council brought about important changes, the TMB fully examined it, took note of it and decided to act in full compliance with it, which it has done consistently since then.

D. TRANSPARENCY

615. Also during the period of implementation of Stage 3 of the integration process, the TMB has consistently pursued its efforts to ensure the highest possible degree of transparency relating to its proceedings. Apart from circulating most of the notifications received to WTO Members without delay[341], the TMB has paid particular attention and done its utmost to provide as much information as possible in its reports regarding all the matters examined by it, describing the main elements of its considerations and providing full details of the reasons for its conclusions, including the rationale for its findings and, if applicable, recommendations.

616. The TMB recalls that in the Singapore Ministerial Declaration adopted in December 1996, Ministers "agree[d] 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 this Ministerial Conference, the TMB has endeavoured continuously to improve the quality of the explanations it provided in terms of the rationale for its findings and recommendations. The Body is of the view that its performance in this regard deserves to be recognized.

E. DECISION-TAKING

617. In conformity with the relevant decision of the General Council[342], the TMB takes all its decisions by consensus. Following the provisions of Article 8.2, consensus does not require the assent or concurrence of members appointed by Members involved in an unresolved issue under review by the TMB.

618. This rule of decision-taking implies that practically in all instances, including the taking note of notifications and the adoption of its reports, the TMB has to proceed by consensus. It should be noted, in this regard, that the TMB succeeded during the period under review, in reaching conclusions by consensus with respect to all the matters it considered and to make appropriate findings, observations and, if applicable, recommendations.

[341] See paragraph 612 above.
[342] See WT/L/26, paragraph 6.

F. VIEWS AND COMMENTS OF WTO MEMBERS IN RESPONSE TO THE TMB'S GENERAL REQUEST FOR INFORMATION AND COMMENTS

619. The communication received from ITCB members contained the following under the heading of "Functioning of the TMB – Article 8": "We recognize that the TMB findings and reports during the Stage under review have been well reasoned and added to the transparency of the implementation process. The Body may like to highlight, however, that in some cases the restraining Member concerned did not conform to its recommendations."

620. No other communication addressed to the TMB in response to its request for information and comments has provided comments or observations related to the Body's work and functioning.

621. With respect to the comments made by ITCB members that "in some cases the restraining Member concerned did not conform to [the TMB's] recommendations", the TMB observes that all such issues are clearly brought out in the respective sections of this report.

PART FOUR: ELEMENTS FOR AN OVERALL ASSESSMENT OF THE IMPLEMENTATION OF THE ATC, WITH PARTICULAR EMPHASIS ON SUMMARIZING IMPORTANT DEVELOPMENTS DURING THE THIRD STAGE OF THE INTEGRATION PROCESS

622. In accordance with the requirements defined in Article 8.11, this report provides, in the different sections of Part Three, a comprehensive overview of developments relating to the implementation of the provisions of the ATC during the third stage of the integration process. In describing developments concerning the implementation of specific ATC provisions during Stage 3, in those cases when the TMB found it necessary or appropriate, references to developments that had occurred during previous integration stages were also included, as background information.

623. At the date of the adoption of the present comprehensive report by the TMB, slightly more than five months remain from the implementation of the ten-year transition period specified by the ATC, following which, on 1 January 2005, the ATC and all restrictions thereunder shall stand terminated and the textiles and clothing sector shall be fully integrated into GATT 1994. Some Members, in providing responses to the TMB's request for information and comments in the context of the preparation of this report, included in their respective communications certain elements which can also be considered as part of their overall assessment of ATC implementation, not limited to the Stage subject to the present report. All such elements of Members' contributions are reproduced below, together with some additional related comments by the TMB. Also, the TMB makes an attempt in the following to summarize some other important developments of ATC implementation, with particular emphasis on developments during the third stage of the integration process. This summary is, by definition, limited to some of the most important matters and aspects and does not include all the issues detailed in the preceding Parts of the report. The purpose of such a summary is to draw, once again, Members' attention to some of the key features of the implementation of the ATC and, thereby, to assist the Council for Trade in Goods to make its own overall assessment in the framework of its third major review of the implementation of the ATC.

I. INTEGRATION PROCESS. THE SCOPE OF QUANTITATIVE RESTRICTIONS MAINTAINED UNDER THE ATC

A. KEY FEATURES AND SOME RELATED OBSERVATIONS

624. Following certain corrections and adjustments, if applicable, the technical requirements for integration of textile and clothing products into GATT 1994, respectively for Stages 1, 2 and 3 of the integration process, have been met by those Members which have provided notifications of which the TMB could take note. For the three successive stages combined, the requirement was to integrate products into GATT 1994 which account for not less than 51 per cent of the total volume of the respective Members' 1990 imports of the products falling under the coverage of the ATC. In addition, for each stage, the respective integration programmes had to include products from each of the four main product groups (i.e. tops and yarns, fabrics, made-up textile products and clothing).

625. Of the Members still maintaining restrictions falling under the provisions of Article 2, with the implementation of the respective Stage 3 integration programmes on 1 January 2002, Canada integrated altogether 53.21 per cent, the European Communities 51.30 per cent, Turkey 78.42 per cent and the United States 51.35 per cent of their respective volume of 1990 imports of the products covered by the ATC. There has been no change in terms of the coverage of products integrated since the implementation of Stage 3 integration programmes, as none of the Members concerned has had recourse to the provisions of Article 2.10 (advanced or earlier integration). Thus, the detailed assessment of the impact of integration programmes implemented so far, as contained in the respective previous section[343], remains also valid at the date of the adoption of this comprehensive

[343] See paragraphs 97 to 134 above.

report; the most important implication being that the bulk of the restrictions maintained under the ATC will only be eliminated on 1 January 2005.

626. It should be also noted that following the accession of new Members towards the end of Stage 2 of the integration process and at the beginning of implementation of Stage 3, the total number of restrictions taken over to the ATC regime and continuing to be maintained under it has increased quite significantly, the restrictions applied on imports from these new Members of the products not yet integrated being governed by the provisions of the ATC as from the date of their membership. As a result, and also illustrating the choice of products selected for integration, although integration programmes for Stages 1 to 3 have been implemented, the total number of specific restrictions maintained at present respectively, by Canada, the European Communities and the United States is higher than the number of restrictions applied by them under the ATC during the implementation of Stage 1 of the integration process.

627. Another important development in this regard during the period of implementation of Stage 3 of the integration process has been the impact of the enlargement of the European Communities. As reported by the European Communities in its communication made in response to the TMB's request for any related notification and, as appropriate, information, "[a]s from 1 May 2004, the European Union includes ten new member States. The Act of Accession establishes [...] that the new member States must apply the common trade policy concerning textiles and that the already existing quantitative restrictions applied by the Community on imports of textile and clothing products are to be adjusted to take account of the accession of the new member States to the Community. These quantitative restrictions, already notified to the TMB, applicable to imports of certain textile products from third countries into the enlarged Community have consequently been adjusted so as to cover equally the imports into the ten new member States. [...] It is pointed out that the Community does not consider this extension of the geographical application of existing restrictions to constitute new restrictions in the sense of Article 2.4 of the ATC. This extension was necessary to realize the enlargement process whilst ensuring the maintenance and unhampered functioning of the expanded internal EU market in the interest of all economic operators, including exporters. [...]"

628. In reviewing this issue, pursuant to Article 2.21, the TMB observed, *inter alia*, that the European Communities considered that the restrictions in question fell under the provisions of the ATC under which they had been previously notified by the EC and that the European Communities did not invoke any other provision of the WTO Agreement, including GATT 1994, as a possible justification for the restrictions. The TMB noted that the restrictions in question as notified previously had been applied by the European Communities composed of 15 member States, while the ten new member States had not previously maintained any restrictions under Article 2.1. Seen in this light, the access to the markets of the ten new member States has become subject to restrictions as from 1 May 2004, resulting from the application of the restrictions notified by the European Communities in 1995 which had encompassed, at this point in time, 15 and not 25 member States. Therefore, for the ten new member States, also Members of the WTO prior to the enlargement of the European Communities and having already undertaken well-defined obligations *vis-à-vis* other WTO Members, *inter alia*, under the ATC, the measure taken by the EC amounted to the introduction of "new restrictions in terms of products or Members", as referred to in Article 2.4. In light of its detailed consideration of the matter, while noting that in the view of the EC, the European Communities had acted in conformity with its respective obligations under the ATC, the TMB was of the view that the extension of the geographical application of the existing restrictions constituted new restrictions in the sense of Article 2.4. Accordingly, these new restrictions could not find a justification under the ATC.[344]

[344] For the TMB's detailed review, see paragraphs 325 to 334 above.

629. Other developments relevant in taking stock of the scope of restrictions notified and applied under the ATC can be summarized as follows:

- Canada brought to the TMB's attention that "in relation to Article 2.15 [of the ATC], Canada's initiative [in respect to improvements to its preferential scheme for least developed countries, effective from 1 January 2003] provides for quota-free access for all products covered by the Agreement". It appears that imports from two WTO Members (Bangladesh and Lesotho) were affected by the measure implemented with reference to Article 2.15.[345]

- The European Communities, in response to the TMB's specific request for information, reported that it has suspended, as from 1 January 2002, the application of restrictions to imports from Sri Lanka and, in the course of 2003, the same treatment has been extended to imports from Brazil.[346]

- The United States, in its communication to the TMB, stated, *inter alia*, that the US "has already extended significant trade preferences to least developed Members through regional trade preference programmes benefiting sub-Saharan African countries and Caribbean countries."[347]

B. VIEWS AND COMMENTS OF WTO MEMBERS

630. In their communication addressed to the TMB, ITCB members stated, under the heading "The integration process" the following:

- "The ATC provided for a ten-year transitional period to accomplish the phase-out of quota restrictions. This long period was intended to facilitate a smooth and progressive process.

- Against the aforesaid objective and purpose of the Agreement, it would be instructive if the TMB could summarize how major restraining countries did actually phase out the quota restrictions. In this connection, [a] Table[348] [...] is submitted for consideration of the Body. In a nutshell:

  - Of a total of 937 quotas applied by the United States on imports of textiles and clothing products from WTO Members under the MFA, it phased out only 103 quotas up until now. This number includes 17 quotas applying against Kenya and Mauritius. These were lifted only under the AGOA legislation. The United States will thus abolish 834 quotas, or 89 per cent of the total, at the end in one go.

  - The EU carried over 303 quotas; phased out 91 as of now; and would abolish 212, or 70 per cent, on 1 January 2005. The number 91 includes 13 quotas that the EU suspended in return for market access concessions that it secured from two WTO Members.

[345] See paragraphs 182 and 183 above.
[346] See paragraphs 194 and 195 above.
[347] See paragraph 519 above.
[348] Reproduced in its integrity as Table 13 of this report.

- Likewise, out of a total of 368 quotas carried over by Canada, it has so far phased out 76. Consequently, it will abolish 292, or over 79 per cent, at the end of the process.

- Contrary to the above three, Norway had already abolished all 54 quotas (46 before the end of 1997 and the remaining eight at the beginning of 2001).

- Looked at from a different angle, and taking as the basis the portion of 1990 import trade that was actually under quota restriction, the United States has thus far integrated less than 20 per cent, while the EU, based on 1995 imports when its membership increased to 15, only 32 per cent. Consequently, the amount of restrained trade left to be integrated by the two at the end of the process is 80 per cent and 68 per cent respectively (the large bulk in each case, consisting of trade in apparel). Unfortunately, for lack of necessary information, it has not been possible to assess similar percentages in respect of Canada and Turkey.

- For assessment of the integration process in its context and in light of the object and purpose of the ATC, the Body may also like to recall that at the very start of the integration process, the United States had declared that it 'will ensure that integration of the most sensitive products will be deferred until the end of the ten-year period' (cf., US Statement of Administrative Action on Uruguay Round Agreements Act). Similarly the EC followed a policy in which it 'considered appropriate to retain control over quotas with a view to keeping the possibility of using them as a bargaining chip to obtain better market access in third countries' (cf., EC Commission web site, Trade in Goods, the textile sector, November 2000).

- It is suggested that the TMB report bring out these facts in order to shed light on the pace and progressivity of the process of phase-out of quota restrictions, and underscore the desirability of the restraining Members taking steps to avoid any rush to alternate methods of protection by their domestic industries following the abolition of the large bulk of quota restrictions only at the end of the phase-out process."

Table 13

PACE OF QUOTA ABOLITION
(as contained in the communication from ITCB members)

	US	**EU**	**Canada**	**Norway**
Total number of quotas at start of ATC[a]	937	303	368	54
Of which phased out:[b]				
(i) Stage 1 (from 1995): By integration under Article 2.6 By early elimination under Article 2.15	0	0	8	0 46

	US	EU	Canada	Norway
(ii) Stage 2 (from 1998):				
By integration under Article 2.8(a)	3	21	26	0
By Article 2.8(a) and Article 4	2			
By early elimination under Article 2.15	10[c]			8
(iii) Stage 3 (from 2002):				
By integration under Article 2.8(b)	69	57	42	0
By Article 2.8(b) and Article 4	2			
Under bilateral agreements		13		
Under AGOA	17			
Total number of quotas abolished as of March 2004	103	91	76	54
Quotas to be abolished on 1 January 2005	**834**	**212**	**292**	**0**

a. Including specific limits and sub-limits notified under Article 2 of the ATC.
b. Numbers do not include product categories on which quotas have been eliminated only partially.
c. Eliminated only for Romania, not for any other restrained Member.

631. ITCB members added the following observation to the information included in Table 13:

"It may be noted that the large bulk of quotas have been kept to be abolished only on the last day of the Agreement. So much about the progressivity of the process, contrary to what was envisioned in the Agreement!"

632. In two communications addressed to the TMB, Canada stated, *inter alia*, as follows:

- "Canada wishes to reaffirm its continuing commitment to the full implementation of the ATC. Canada has fully complied with the ATC obligations set out in the transition provisions. As Canada indicated in its communication of 13 May 2004 to the TMB, all textile and apparel products not integrated during the first three stages of integration into GATT 1994 will be integrated by 1 January 2005 and the quantitative restrictions on these products will be eliminated by that date.

- Canada has significantly and meaningfully liberalized its restraint regime by removing quotas on products of direct interest to exporting countries. In the first two phases, we removed from quota the following commercially-significant products: tailor collared shirts, rainwear, women's & girls' ensembles, women/girls knitted blouses, children's blouses and baby outerwear. In addition, in 1998 we increased by 10 per cent the restraint levels for winter outerwear, over and above what the required growth rates specified in the ATC.

- For the third phase of the ATC, Canada integrated a wide range of apparel products including women's/girl's/children's suits and ensembles, all knitted and woven shirts, blouses and tops, swimwear, all babywear, and thermal and standard overalls. Quotas were removed from apparel products, irrespective of the material they are made of. None of the partially liberalized quotas, and none of the combined quotas, were readjusted, which resulted in a further *de facto* increase in access to our market.

- On the textile front, Canada has traditionally maintained quotas on only few of its imports. Restrained imports of yarns and made-up textiles added up to less than 5 per cent in 1990. Over 85 per cent of fabrics were imported free of quota that year. Still, our industry has been adapting and developing markets for its products, to prepare for the new trading environment. In addition, this industry is adapting to intensified competition arising from regional and bilateral trade initiatives.

  [...]

- Canada has not requested any consultations under Article 6 of the special safeguards provision."

633. In its communication, providing observations, *inter alia*, on ITCB members' assessment of the integration programmes implemented by the EC so far, the European Communities stated the following:

> "As to the observations [of ITCB members] concerning implementation of integration programmes, the Community is on record to have fully complied with the provisions of the ATC. This finding was duly made against allegations against restraining countries of back-loading liberalization under the ATC. The reference to the Commission's web site made by ITCB Members should duly be seen in this connection, since it is manifest that the Community consistently has held the possibility open to exporting countries to engage in talks of reciprocally increased market access."

634. In its communication, essentially responding to the submission received from ITCB members, the United States stated, *inter alia*, the following:

> "[It should be] point[ed] out, first and foremost, that the United States has fully complied with its obligations under the ATC, including with respect to the integration programme set forth in Article 2. The United States announced its integration schedule on 13 October 1994 for Phase 1, and 1 May 1995 for Phases 2, 3 and 4. It has abided by this schedule, and intends to continue to do so. ITCB members have frequently complained that the United States has not liberalized its system more quickly than is called for under the ATC. The US textile and apparel industry is being forced to undergo a major restructuring as a result of the commitments the United States made in the Uruguay Round, and a million jobs have been lost in the United States. While the United States intends to honour its commitments, it will not accelerate the integration schedule in the face of the serious conditions facing the US industry.
>
> Moreover, the United States notes that several ITCB members have maintained policies and practices that have effectively limited access to markets in this sector, despite the obligation in Article 7 of the ATC to "achieve improved access to markets for textiles and clothing through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities". While the United States has been opening its market, ITCB members have been keeping theirs shut to US exports. Under such conditions, it is impossible for the United States to justify early integration, as requested by the ITCB. Moreover, the United States hopes and expects as part of its review of the implementation of the ATC that the TMB will review whether ITCB members have adhered to their obligations under Article 7 of the ATC. US import statistics clearly demonstrate that the United States has lived up to its obligations under Article 7, with imports of textile and apparel products up by 150 per cent since 1994, increasing from

17.3 Billion Square Metres Equivalent (BSME) in 1994 to 43.2 BSME for the year ending March 2004. We question whether ITCB members can say the same.

[...]

The numbers indicated by the ITCB [members' submission, as reflected in Table 13 of the present report] appear to be largely accurate. As the ITCB has pointed out, the United States has made clear from the very start of the integration process that it intended to integrate the most sensitive products at the end of the ten-year integration period. This is consistent with ATC requirements, and the United States can assure the TMB that it has fully lived up to its commitments under the formulas to which all Members agreed and which were incorporated into the ATC."

C. SOME RELATED COMMENTS AND ADDITIONAL OBSERVATIONS BY THE TMB

635. The TMB has always considered that the integration process is a central element of ATC implementation since it provides the vehicle for bringing international trade in textiles and clothing products under the general rules and principles of GATT 1994. The detailed assessments made by ITCB members, as reflected in paragraph 630 above, on the one hand and the related statements made, in particular, by the European Communities and the United States (cf. paragraphs 633 and 634 above) on the other, highlight, once again, the wide divergences in Members' views and judgement regarding ATC implementation in general and the integration process in particular.

636. The TMB has to reiterate and also update some of the related observations it made in the first and second comprehensive reports. It has already pointed out that 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, products which accounted for 49 per cent of the total volume of the Members' 1990 imports of the products covered by the ATC may remain to be integrated after the implementation of Stage 3 integration programmes; this during a period of only 36 months;
- that the large majority of the products subject to restrictions under the ATC (in particular under Article 2.1 thereof) will have to be integrated during the same period.

It was on the basis of these considerations that the TMB recommended, in its second comprehensive report, that the Council for Trade in Goods invite the Members concerned to have recourse, whenever possible, to the provisions of Articles 2.10 (advanced integration) and 2.15 (early elimination of quantitative restrictions) during the implementation of the third stage of the integration process.

637. It is in light of the aforesaid that the TMB notes:

- The statement of Canada that "[it] has fully complied with the ATC obligations set out in the transition provisions";
- the statement of the European Communities that "the [EC] is on record to have fully complied with the provisions of the ATC";
- the statement of the United States that "[it] has fully complied with its obligations under the ATC, including with respect to the integration programme set forth in Article 2".

638. Furthermore, it should be noted with appreciation that as a result of successive measures implemented with reference to Article 2.15, Norway no longer maintains any restrictions under the ATC as from 1 January 2001.

639. The TMB has some difficulties in understanding the reference to "allegations against restraining countries of backloading liberalization under the ATC", since ITCB members' assessment regarding the number of restrictions to be abolished on 1 January 2005 has not been contested and also, because the notion of backloading the integration of most of the products subject to restrictions can appropriately characterize the impact of the integration programmes implemented so far, even though they met the technical requirements defined by the ATC. Moreover, one of the major restraining Members clearly reiterated, once again, that "it [had] made clear from the very start of the integration process that it [had] intended to integrate the most sensitive products at the end of the ten-year integration period."

640. Furthermore, it is also in light of the observations contained in paragraph 636 above that the TMB notes the assessments and comments of ITCB members regarding the pace of elimination of restrictions notified and maintained under the ATC. The TMB observes that in terms of the total number of specific restrictions applied by restraining Members, the information at the Body's disposal is either identical with or very close to the picture presented by ITCB members in Table 13. It is also noted in this regard that the United States stated that "[t]hat the numbers indicated by the ITCB [members' communication] appear to be largely accurate". Though, in this light, roughly 80 per cent of the total number of specific restrictions applied under the ATC will only be eliminated on the date of the implementation of the final stage of integration, i.e. on 1 January 2005, it should be recalled that the Members maintaining such restrictions have explicitly reaffirmed their commitment to eliminate all those restrictions on schedule.

II. ISSUES RELATED TO THE IMPLEMENTATION OF QUANTITATIVE RESTRICTIONS

641. During Stage 3 of the integration process, the TMB reviewed several new notifications received with reference to Article 2.1 and the provisions of the respective legal instruments of accession of China, Chinese Taipei and the Former Yugoslav Republic of Macedonia (FYROM). These notifications listed the quantitative restrictions maintained on imports of certain textile and clothing products from these newly acceded Members. In reviewing the notifications concerned, the TMB has done its utmost with a view to establishing the proper facts and examining all the related matters, in accordance with the requirements of Article 2.21.[349] The same applies to the review of all the related administrative arrangements notified pursuant to Article 2.17.[350]

[349] For the detailed review of these notifications, see paragraphs 146 to 178 above.
[350] For the review of these arrangements , see paragraphs 264 to 306 above.

642. In accordance with the provisions of Article 2.14(b), for the period 2002-2004 the level of the remaining restrictions had to be increased annually by the importing Members by the growth rate for the respective restrictions during Stage 2 of the integration process, increased by 27 per cent. While no particular matter or problem has been brought to the TMB's attention regarding the implementation of the provisions of Article 2.14(b) as such, the TMB has devoted a great deal of time and attention to reviewing the implementation of the growth-on-growth provisions (as contained in Articles 2.13, 2.14(a) and 2.14(b)) in relation to the level of restrictions maintained on imports from newly acceded Members.[351] The TMB reiterates its concerns that the applicable provisions of the respective legal instruments of accession to the WTO do not provide unambiguous guidance regarding the appropriate methodology to be applied in implementing these provisions *vis-à-vis* these newly acceded Members.

643. Exporting Members continued to rely on the use of the flexibility provisions foreseen in Article 2.16 also during Stage 3 of the integration process. A number of exporting Members raised, however, in mid-July 2003, at the level of the General Council their concern about potential reduction in market (quota) access in 2004. The problem identified by these Members stems from the fact that "the restraining importing Members contend that as all quotas will be eliminated at the end of 2004, there will be no carry forward available from 2005." As to the way forward, exporting Members requested that "the General Council consider the matter and recommend that developed Members take steps to ensure that there is no diminution of quota access for developing Members on account of quota carry forward in 2004." So far, the General Council has provided no positive resolution to this request. The TMB reiterates in this regard its hope that appropriate solutions to this matter, acceptable to all Members, will be found and adopted by the General Council in the near future. The TMB believes that appropriate solutions to avoiding potential reduction in market access opportunities in 2004 can be sought by relying on a number of different mechanisms or a combination thereof.[352]

644. As far as the treatment accorded to small suppliers in the sense of Article 2.18 is concerned, Canada, the European Communities and the United States increased the annual growth rates applied during Stage 2 for WTO Members falling under the provisions of Article 2.18 in their respective regimes by 27 per cent as from 1 January 2002. The TMB recalls in this regard that the methodology chosen by the respective restraining Members for the implementation of these provisions during Stage 1 (when the European Communities increased the growth rates applicable for the first stage, first, by 16 per cent and, second, by 25 per cent in lieu of 16 per cent; while Canada and the United States increased them by 25 per cent instead of 16 per cent) predetermined the possible impact of the implementation of the same provisions during the successive integration stages.[353] It should be also mentioned that following the Doha Ministerial Decision on Implementation-Related Issues and Concerns, the Council for Trade in Goods was unable to make recommendation to the General Council, *inter alia*, with respect to this subject-matter.[354]

645. Following the accession of China and Chinese Taipei to the WTO, the TMB received a number of new notifications also regarding restrictions falling under the provisions of Article 3.1. Subsequently, progressive phase-out programmes in the sense of Article 3.2(b) were provided to the TMB which examined them. It can be established that all these programmes as well as those programmes falling under Article 3.2(b) that had been notified during earlier integration stages clearly commit the Members concerned to eliminate fully the respective restrictions at the latest on 1 January 2005.

[351] For the detailed review of the TMB, see paragraphs 201 to 245 above.
[352] See also paragraphs 256 to 261 above.
[353] For more details, see in particular paragraphs 311 to 317 above.
[354] See paragraphs 586 and 587.

646. In accordance with the provisions of Article 4.1, also during the implementation of Stage 3, the exporting Members continued to administer the restrictions referred to in Article 2 and those applied under Article 6.

647. The TMB notes that in their response to the TMB's request for information and comments, ITCB members reiterated their concerns regarding the effects of the changes implemented in 1996 by the United States in its rules of origin affecting textiles and clothing products. The concerns raised this time focused, *inter alia*, on the fact that in effecting these changes, the United States enlarged the coverage of certain cotton made-up products, as a result of which products were deemed to be of cotton, even if they contained only 16 per cent of cotton by weight. ITCB members expressed the view that "[n]otwithstanding that a dispute panel ruled that the complainant in that case did not succeed in establishing that the changes had been effected in violation of obligations under the Agreement on Rules of Origin, [...] the change in classification of cotton products enlarged the scope and incidence of restrictions on these products to the disadvantage of the exporting Members concerned."

648. In the same communication, ITCB members stated also that there had been instances of transfer of particular products from relatively unimportant categories (in which quota utilization rates were low) to high-demand, tight-quota categories, thereby increasing the restrictiveness of the quotas concerned. To support this statement, a list of such cases was brought, subsequently, to the TMB's attention; several such cases having been related to the period of implementation of Stage 3 of the integration process.[355]

649. Recalling that the introduction of changes such as those indicated in paragraphs 647 and 648 above are governed by the provisions of Article 4.2 and also that, pursuant to Article 4.4, "[i]f a mutually satisfactory solution is not reached [in consultations between the Members concerned], any Member involved may refer the matter to the TMB for recommendations as provided in Article 8 [of the ATC]", the TMB observes, *inter alia*, that during the third stage of the integration process no further changes have been implemented by any Member to its applied non-preferential rules of origin in this sector. It is also observed, however, that several Members continue to perceive that the changes implemented in the US rules of origin have had an adverse effect on their trading interests and their rights under the ATC, *inter alia* because of resulting changes in the classification of cotton products.

650. The TMB also notes the concerns raised with respect to certain changes implemented in product classification other than those attributed to the effect of changes in the rules of origin. While such changes should conform to the requirements of Article 4.2, it is argued that some of the reported changes could adversely affect the access available to the Members concerned. It is observed, however, that none of the Members has referred any such specific matter to the TMB with reference to the provisions of Article 4.4.

651. As a result of the implementation of Stage 3 integration programmes, in several instances a part of a category (or of merged categories) subject to restraint and also a number of categories falling under group or aggregate limits were integrated, respectively, by Canada and the United States. While Canada decided not to reduce the level of the respective remaining restraints, the United States apparently implemented downward adjustments of quota levels for partially integrated products. The TMB recalls in this regard that in its second comprehensive report, adopted five months prior to the implementation of possible adjustments resulting from the third stage of the integration process, it expressed, *inter alia*, the expectation that "the Members concerned will make full use of their consultations in conformity with the provisions of Articles 4.3 and 4.4. In the view of the TMB, prior to its implementation, any such adjustment should be mutually agreed between the United States and

[355] For more details, see paragraphs 467 to 468 and 472 to 473 above.

its trading partners in the framework of the consultations envisaged in Article 4.4."[356] The TMB observes in this respect that no Member, including those Members which acceded to the WTO since the TMB had adopted its comprehensive report on the implementation of the ATC during the second stage of the integration process, has referred such matter to the TMB with a view to indicating that no mutually satisfactory solution could be reached in the consultations envisaged in Article 4.4 and, therefore, referring the issue to the TMB for recommendation as provided for in Article 8.

652. During Stage 3, no issue has been referred to the TMB with specific reference to the provisions of Article 5 concerning potential circumvention of the ATC. Also, unlike in the case of the TMB's preparation of its second comprehensive report, none of the communications received from major importing and exporting Members in the context of the preparation of this report raised any such matter at all. The TMB recalls that it has stated already the following: "it would appear that Members have invested substantial efforts with a view to addressing problems arising from the potential circumvention of the ATC, despite the sensitive and controversial nature of this subject. [...] The TMB encourages Members to strengthen further their cooperation in this regard in a balanced manner which would, on the one hand, reconcile the requirements of efficiency while not causing unnecessary additional burden for the respective authorities and economic operators involved, on the other".[357]

653. The TMB also recalls in this regard that during the entire transition period of ATC implementation only one specific matter which would fall under the provisions of Article 5 has been referred to the Body. In light of this it would appear that although there could be other instances in which Members were confronted with problems such as those identified in Article 5, the particular matters could be apparently addressed and solved in the framework of the strengthened cooperation between the Members concerned.

III. APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM

654. During the period of implementation of Stage 3 of the integration process, there have only been two recourses to the provisions of Article 6, both by Brazil in 2002. In these two cases, restraint measures were agreed between the Members concerned (Chinese Taipei and Korea) and Brazil. The TMB reviewed these measures in detail and determined that, in both cases, the agreements were justified in accordance with the provisions of Article 6.

655. In order to assess developments related to the use of the transitional safeguard mechanism, it is appropriate to summarize briefly all those cases in which Members invoked the provisions of Article 6 during the entire transition period of ATC implementation. Table 14 summarizes, in an annual breakdown, all the requests made by Members for consultations, pursuant to Article 6.7 or, if applicable, Article 6.11. Members had recourse to these provisions altogether in 65 cases, of which 34 cases during Stage 1; 29 cases during Stage 2; and two cases during Stage 3 of the integration process. The United States invoked provisions of Article 6 in 28 cases, Argentina in 17 cases, Brazil and Colombia each in nine cases and Poland in two cases. The most telling indication in this overall picture is that of the 28 cases when the United States invoked these provisions, 24 were concentrated in the first half of 1995, i.e. in the first six months of the implementation of the ten-year transition period. The concentration in terms of timing of such a large number of cases, and, in particular, the perceived shortcomings in the supporting evidence presented by the United States caused serious concerns to several exporting Members during the early period of ATC implementation. The examination of the requests by the United States for consultations and of the resulting measures made by the TMB, and, in three cases, subsequently, by DSB panels led to the conclusion that in most of these cases, the United States had not complied with important obligations under Article 6.

[356] See G/L/459, paragraph 429.
[357] Ibid., paragraph 481.

656. The fact that only two recourses to the provisions of Article 6 were made in 2002, none in 2003 and, so far, in 2004, confirmed the trend already observed by the TMB of a substantial decline in the use of the transitional safeguard mechanism from the beginning of the year 2000. As to the possible reasons and explanations for this trend, the TMB is of the view that the reasons put forward in its second comprehensive report, i.e., *inter alia*, the disciplines embodied in and the control exercised by the WTO system, the jurisprudence set by the respective panel and Appellate Body reports, which provided detailed guidelines to Members and established appropriate standards on which the TMB has been able to rely in improving the efficiency and transparency of TMB proceedings and reports, have remained valid. Also, the sparing use of the transitional safeguard mechanism should facilitate the full integration of the textile and clothing sector into GATT 1994 within the time-frame specified in Article 9.

Table 14

REQUESTS FOR CONSULTATIONS IN THE CONTEXT OF RECOURSE TO THE PROVISIONS OF THE TRANSITIONAL SAFEGUARD MECHANISM

YEAR	MEMBERS REQUESTING CONSULTATIONS	NUMBER OF REQUESTS
1995	United States	24
1996	United States Brazil	1 7
1997	United States	2
1998	Colombia United States	9 1
1999	Argentina Poland	17 1
2000	None	None
2001	Poland	1
2002	Brazil	2
2003	None	None
2004	None	None
TOTAL		**65**

IV. SOME OTHER ISSUES AND ASPECTS RELATED TO THE IMPLEMENTATION OF THE ATC

A. IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 7

657. Though communications received from Members, in particular in the context of the preparation of the TMB's second comprehensive report, but to some extent also of the present report, raised specific concerns regarding the implementation of the provisions of Article 7 related, with reference to the specific commitments undertaken by Members as a result of the Uruguay Round, to achieving improved access to markets and ensuring the application of policies relating to fair and equitable trading conditions in such areas as dumping and anti-dumping rules, subsidies and countervailing measures, protection of intellectual property rights, during the period of implementation of Stage 3 of the integration process no notification has been received by the TMB from any WTO Member with specific reference to any of the provisions of Article 7. Thus, despite the unambiguous obligations specified in the relevant provisions of the ATC, none of the Members has found it appropriate to notify to the TMB, pursuant to Article 7.2, any action referred to in Article 7.1 which could have a bearing on the implementation of the ATC. Likewise, no summary with reference to the respective original notification(s) that could be addressed to other WTO bodies, has been provided to the TMB. Also, no reverse notifications, as specified in Article 7.2, have been received. Similarly, the TMB has not received any information from any Member regarding possible cases where any Member considered that another Member had not taken the actions referred to in Article 7.1, and that the balance of rights and obligations under the ATC had been upset and, therefore, the Member concerned had decided to bring the matter before the relevant WTO bodies, as provided for in Article 7.3. The TMB noted that, in the absence of such information that should have been provided by Members, the Body did not have to comply with the requirements defined in the last sentence of Article 7.3, according to which "[a]ny subsequent findings or conclusions by the WTO bodies concerned shall form a part of the TMB's comprehensive report." It was also observed that information made in the context of the preparation of this report cannot be considered as a substitute to complying with the procedural requirements laid down in the provisions of Article 7.

658. Notwithstanding the above, for the sake of comprehensiveness and strictly as background information, the TMB has included in the comprehensive report a summary of some of the issues that could be relevant in this context and could be identified on the basis of official WTO documents (notifications and communications to and reports of other WTO bodies)[358].

B. IMPLEMENTATION OF ARTICLE 1.4 REGARDING COTTON-PRODUCING EXPORTING MEMBERS

659. During the entire transition period of ATC implementation Members have had different perceptions on how the particular interests of the cotton-producing exporting Members as envisaged in Article 1.4 were and should have been reflected in the implementation of the provisions of the ATC. Already in its first comprehensive report the TMB had, *inter alia*, encouraged interested Members to enter into consultations with a view to clarifying the issues related to the implementation of Article 1.4. In this regard, the TMB had recalled that, should the need arise, the provisions of Article 8.4 are available for this purpose. In the second comprehensive report the TMB reiterated this encouragement.

660. Against this background, it should be noted that no communication whatsoever has been received from any Member by the TMB during the implementation of Stage 3 of the integration process with specific reference to the provisions of Article 1.4. In fact no such specific communication has been addressed to the TMB since the entry into force of the ATC.

[358] See paragraphs 535 to 563 above.

C. AUTONOMOUS INDUSTRIAL ADJUSTMENT AND INCREASED COMPETITION IN MEMBERS' MARKETS

661. It has been a preoccupation of the TMB throughout the ten-year transition period 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. The TMB observed already in its first comprehensive report that 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 Members' markets. This interrelation is clearly recognized by Article 1.5. Despite the encouragement of the Council for Trade in Goods for Members to provide information, from time to time, to the TMB on relevant developments in this area, no information has been addressed in this regard by any of the Members to the Body during the period of implementation of Stage 3 of the integration process. It was only at the request of the TMB for appropriate information in the context of the preparation of the present report that some communications were received that also touched upon certain aspects relevant in the context of Article 1.5. It should be noted, however, that in terms of providing information on developments regarding autonomous industrial adjustment and increased competition in Members' markets, these communications were very brief, remained at the level of generalities and, without any doubt, contained fewer specific elements, if any, than the respective information provided to the Body as it prepared the second comprehensive report. Therefore, on the basis of the information at its disposal, the TMB is simply not in a position to express any view regarding the implementation of Article 1.5 during the third stage of the integration process. One would assume, however, that adjustment in the sense of Article 1.5 has continued, as also reflected in the general statements received. This assumption notwithstanding, there is no basis for the TMB to assess whether such adjustment has been adequate, or not, in terms of preparing the respective industries for the competitive environment of the post-ATC regime.

D. ELIMINATION OF RESTRICTIONS ON IMPORTS FROM CERTAIN NON-WTO MEMBERS WHILE MAINTAINING THEM ON WTO MEMBERS

662. In their communication addressed to the TMB in the context of the preparation of the present report, ITCB members raised their concern that the European Communities had abolished all quotas on imports from certain non-WTO members, while keeping them in place on WTO Members. ITCB members expressed the view that this is contrary to the provisions of Article 1.6, as it represents a disregard of the fundamental MFN requirement as defined in GATT 1994. Recognizing that this issue raised questions as to whether rights and obligations of WTO Members had been affected under the WTO Agreement, in particular under GATT 1994, the TMB observed that, as a result of the elimination of restrictions on imports from non-WTO Members of products covered by the ATC, WTO Members were, in fact, placed at a disadvantage *vis-à-vis* certain non-WTO Members, whereas it could have been expected that, being Members of the WTO, this would at minimum not have been the case. At the same time the TMB observed that it could not find a provision in the ATC which would allow it to pronounce itself or draw conclusions on the rights and obligations of WTO Members under the provisions of GATT 1994.

V. FINAL STAGE OF INTEGRATION TO BE IMPLEMENTED ON 1 JANUARY 2005

663. Also as part of a broader assessment, it should be borne in mind that the ATC, as one of the multilateral agreements on trade in goods included in the Annexes of the WTO Agreement, is an integral part of the results of the negotiations conducted in the framework of the Uruguay Round. It had been presented and also perceived as one of the most important elements of the Uruguay Round results for several Members, in particular exporting developing countries and territories, both in terms of potential short and longer term economic benefits and also in terms of systemic importance. During the ten-year transition period for the integration of the textiles and clothing sector into GATT 1994, Members have had very divergent assessments regarding the quality of ATC

implementation, a continuous source of real or potential problems and, very often, hardly veiled frustrations.

664. Against this background it is a welcome fact that in the respective official notifications repeated assurances have been recently provided regarding the timely and full implementation of the ATC. The Agreement will be fully implemented as scheduled and provided for in Article 9. Thus 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, thereby putting an end to a special and discriminatory regime that has been in application for more than four decades.

665. The TMB believes that it has made a useful contribution by reminding Members that they should comply with their respective obligations of providing notifications regarding the final stage of integration to be implemented on 1 January 2005. The notifications received, respectively, from Canada, the European Communities, Turkey and the United States stated explicitly that on the date of full integration (i.e. on 1 January 2005) all remaining restrictions under the ATC would be eliminated. While observing that these reaffirmations were fully in line with the provisions of Articles 2.8(c) and 9, the TMB also notes that these statements conveyed an appropriate and timely message not only to other WTO Members, but also, through the wide dissemination of this information, to all economic operators involved. With regard to those Members that have not yet provided notifications that were due pursuant to the provisions of Article 2.8(c) and 2.11, the TMB reiterates that the ATC and all restrictions shall stand terminated on 1 January 2005, irrespective of whether WTO Members have submitted, or not, or are going to provide, or not, notifications regarding their final stage of integration.

666. The timely and full implementation of the ATC will bring about, without any doubt, important trading opportunities and also challenges WTO Members will have to meet. This timely and full implementation of the ATC should be also regarded as a renewed manifestation of WTO Members to their commitments undertaken in the framework of the multilateral trading system, thereby also strengthening the credibility of this system.