WORLD TRADE ORGANIZATION

G/L/224
19 February 1998

(98-0574)

Council for Trade in Goods

MAJOR REVIEW OF THE IMPLEMENTATION OF THE AGREEMENT ON TEXTILES AND CLOTHING IN THE FIRST STAGE OF THE INTEGRATION PROCESS

Adopted by the Council on 16 February 1998

Introduction

1. The Council is responsible for overseeing the implementation of the Agreement on Textiles and Clothing (ATC) and for this purpose is required by Article 8.11 to "conduct a major review before the end of each stage of the integration process". Article 8.12 states, "In the light of its review the Council for Trade in Goods shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations embodied in this Agreement is not being impaired". As the first stage, which began with the entry into force of the WTO on 1 January 1995, was completed at the end of 1997, the Council was required to conduct its first review of the implementation of the ATC before the end of the year. To assist in this review, Article 8.11 of the ATC also requires that a comprehensive report be prepared by the Textiles Monitoring Body and be transmitted to the Council for Trade in Goods at least five months before the end of the stage.

2. Accordingly, in preparation for the current review, the TMB prepared a comprehensive report on the implementation of the ATC and submitted it to the Council on 31 July 1997 in document G/L/179. This comprehensive report addressed all of the operational provisions of the ATC, as required by Article 8.11, with particular emphasis on matters relating to the integration process, to the application of the transitional safeguard mechanism, and to those concerning the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 of the ATC, respectively. Furthermore, since the notification of integration programmes for Stage 2 was required at the latest by 31 December 1996, the TMB report also covered the fulfilment of that notification obligation.

3. The Council began the review at its regular meeting on 6 October 1997, focusing the discussion initially on the general aspects or overall perspectives of the implementation process (G/C/M/23, pages 17-26). The 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. The Council noted the views of Members on the goals and objectives of the review and how it might be structured.

4. It was agreed that a series of Council meetings be arranged to analyse the various issues in depth. The Council agreed to hold meetings on 16 and 20 October and 7 and 13 November 1997 to discuss the integration process, the transitional safeguard mechanism, the application of GATT rules and disciplines as defined in Articles 2, 3, 6 and 7 of the ATC, respectively, and other relevant topics.

5. In their initial exchange of views, Members were in agreement that the comprehensive report of the TMB would be a valuable contribution to the review, providing detailed factual information on all aspects of the implementation process. At the meeting on 16 October 1997, the Council also received a paper by Hong Kong, China setting out elements for consideration in the review (G/C/W/95). The representative of Colombia, on behalf of the ITCB members that are also WTO Members, provided papers with assessments and analyses of the topics addressed at these meetings. These were subsequently

circulated in G/C/W/99, 100, 101 and 103. Further statements made by Members and papers provided by some of them were reflected in the minutes of the relevant Council meetings, set out in documents G/C/M/24 to 28 while the report on the initial discussions, which was part of the Council meeting of 6 October, was included in G/C/M/23.

6. The Agreement on Textiles and Clothing (ATC), in accordance with Article 1.1, sets out provisions to be applied by Members during a transitional period of ten years for the integration of the textiles and clothing sector into GATT 1994.

7. The Ministerial Declaration adopted at the first Ministerial Meeting of the WTO (December 1996, Singapore), contains the following section on Textiles and Clothing: "We confirm our commitment to full and faithful implementation of the provisions of the Agreement on Textiles and Clothing (ATC). We stress the importance of the integration of textile products, as provided for in the ATC, into GATT 1994 under its strengthened rules and disciplines because of its systemic significance for the rule-based, non-discriminatory trading system and its contribution to the increase in export earnings of developing countries. We attach importance to the implementation of this Agreement so as to ensure an effective transition to GATT 1994 by way of integration which is progressive in character. The use of safeguard measures in accordance with ATC provisions should be as sparing as possible. We note concerns regarding the use of other trade distortive measures and circumvention. We reiterate the importance of fully implementing the provisions of the ATC relating to small suppliers, new entrants and least-developing country Members, as well as those relating to cotton-producing exporting Members. We recognize the importance of wool products for some developing country Members. We reaffirm that as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such action as may be necessary to abide by GATT 1994 rules and disciplines so as to achieve improved market access for textiles and clothing products. We agree that, keeping in view its quasi-judicial nature, the Textiles Monitoring Body (TMB) should achieve transparency in providing rationale for its findings and recommendations. We expect that the TMB shall make findings and recommendations whenever called upon to do so under the Agreement. We emphasize the responsibility of the Goods Council in overseeing, in accordance with Article IV:5 of the WTO Agreement and Article 8 of the ATC, the functioning of the ATC, whose implementation is being supervised by the TMB".

8. The Council reiterated the commitment by Members to the full and faithful implementation of all provisions of the Agreement on Textiles and Clothing. The Council noted that, as specified in Article 9, the ATC and all restrictions thereunder shall stand terminated on 1 January 2005, on which date the textiles and clothing sector shall be fully integrated into GATT 1994 and that there shall be no extension of the ATC.

The Process of Integration

9. The process for the integration of textiles and clothing products covered by the ATC into GATT 1994 rules and disciplines is set out in Articles 2.6 to 2.11 of the ATC. According to the ATC, integration takes place in four stages, as specified in Articles 2.6 and 2.8, except for those Members which did not maintain restrictions under the MFA and, pursuant to Article 6.1, chose not to retain the right to use the safeguard provisions of Article 6. Such Members are, according to Article 2.9, deemed to have integrated their textile and clothing products into GATT 1994 and are, therefore, exempted from complying with the provisions of Articles 2.6 to 2.8 and 2.11. As regards the first stage, Article 2.6 states that "On the date of entry into force of the WTO Agreement, each Member shall integrate into GATT 1994 products which accounted for not less than 16 per cent of the total volume of the Member's 1990 imports of the products in the Annex, in terms of HS lines or categories. The products to be integrated shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing". The same requirements exist for the

integration of products in Stages 2 and 3 except that the volume of products to be integrated would be not less than 17 per cent and 18 per cent of the Members' 1990 imports, respectively. At the end of the transition period, on 1 January 2005, all remaining products would be integrated and the Agreement together with all restrictions under it would be terminated.

10. In the Council's discussion of the integration process, some Members stressed the importance of non-discriminatory trade in textiles and clothing to the economic and social development of their countries, it being a key foreign exchange earner and an important source of employment. Consequently, an open and liberal trading system for textiles and clothing was of considerable importance. Some Members were of the view that the integration programmes of the four Members maintaining restraints carried over from the MFA were a different matter from those of the other Members as they involved the elimination of quantitative restraints while the others did not involve the elimination of quantitative restraints. Accordingly, they directed their comments primarily at the integration programmes notified by these four Members. They pointed out that, notwithstanding the fact that the required percentages of products to be integrated had been met (with the exception of a shortfall in one Member which was being addressed in the TMB), the integration programmes of the importing Members for Stages 1 and 2 were not commercially meaningful for developing exporting Members: the products selected for integration were concentrated in less value-added products such as tops, yarns and fabrics, with only small shares of made-up textile products and clothing; furthermore, the shares of integrated products were substantially lower in terms of value of trade than in volume of trade while more of the integrated trade was being accounted for by imports from developed countries than from developing countries. These Members noted that the proportion of the integrated trade in respect of products that were under restraint was in the range of only 0-3 per cent of 1990 imports of products covered by the ATC. As the first and second stages of integration would have little or no impact on the restraints, with over 96 per cent of restricted trade remaining to be integrated even after seven years of implementation, there would be no benefits for developing countries. These Members also considered that this "back-loading" of integration with virtually all meaningful integration being left to the last three years of the ATC, coupled with the use of other trade-restricting instruments, would not be conducive to meeting the objectives of trade liberalization. The process of integration was far from being "progressive in character" as envisioned in the ATC. Another area of concern to these 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.

11. Some other Members, noting that the objective of the ATC was the integration of the textiles and clothing sector into GATT 1994 rules and disciplines by 1 January 2005, responded that the ATC, including the provisions relating to integration, applied to all Members and not just to four Members. They were of the view that the integration process could only be examined with reference to the specific provisions of the ATC. In response to the points raised by other Members, they stressed that nothing in the ATC stated that a certain percentage of products under quota would be required to be integrated at each stage and that it was the right of each Member to choose the products from the Annex to the ATC for integration. In this context the Members maintaining restrictions notified under Article 2 stressed that they had met all of their obligations in respect of both Stages 1 and 2; further, they confirmed their commitment to achieve full integration by 2005. They noted that their integration programmes included some restrained products for the second stage. They also observed that not all benefits to be achieved through the integration process could be met at the outset or at any particular stage. These Members further observed that the pattern of integration of products seemed to be a universal phenomenon followed by most Members with integration programmes. One Member noted that, in its particular case, over 50 per cent of the products it integrated were textile made-up products. It had also announced the removal of a number of quotas on one product, using Article 2.15. Another Member had undertaken to eliminate restrictions, applying Article 2.15 of the ATC, so that by the end of 1998, 94 per cent of its quotas would be removed. 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.

12. The comprehensive report of the TMB provides information on the integration process in Section II with an overall assessment being contained in Sub-Section E.

13. The Council noted that, subject to certain corrections, the legal requirements for integration of textile and clothing products into GATT 1994 in the first two stages had been fulfilled. The Council noted, however, that the integration programmes of the major importing Members during the first stage, and as announced for the second stage, included only a small number of products which had actually been under quota restrictions, therefore, leaving a large number of products for which quota restrictions would need to be eliminated during the remainder of the transition period.

14. The Council recalled the importance attached by Ministers in their Declaration at the first Ministerial Conference in Singapore to the implementation of the ATC so as to ensure an effective transition to GATT 1994 by way of integration, which is progressive in character. It also welcomed that two Members had applied the provisions of Article 2.15 for the early elimination of quantitative restraints and encouraged Members to continue to have recourse, where appropriate, to the provisions of Article 2.15, and to Article 2.10 on advanced integration.

15. 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.

The Application of the Growth Rate Factors

16. The ATC also requires that the growth rates applicable to the restraints carried over from the former MFA shall be increased by a factor at each stage. Article 2.13 requires that during Stage 1 of the Agreement, the growth rates carried over from the former MFA would be increased by not less than 16 per cent. Article 2.14 requires that the growth rates be increased by not less than 25 per cent during the second stage and by not less than 27 per cent during the third stage, except where the Council for Trade in Goods or the Dispute Settlement Body decides otherwise.

17. Some Members were of the view that the ATC had anticipated two paths to the progressive liberalization of textile and clothing trade; one was integration and the other was the application of growth rate factors. The two paths were not substitutes; rather, the intention was that they would proceed in parallel. In calculating the effects of the increased growth rates they considered that the increase in the quota levels in the first stage by the application of growth rate factors was misleading. A number of Members felt that the application of the growth rate factors would not significantly increase market access. Any assessment of the economic effect of the growth rate increases would have to take into account the fact that quotas with low rates of utilization tended to have higher growth rates. The point being made was that without meaningful integration and with the increases in the quotas being minimal, these processes could not be counted upon to produce a smooth and effective integration of this sector into WTO rules.

18. Some other Members considered that the provisions for enhanced growth rates contained in Articles 2.13 and 2.14 of the ATC would operate to give substantial increases in the volumes of the restrictions concerned. The application of the growth rate factors was cumulative and exponential, providing a valuable part of the integration process. They also considered that the accelerated growth rates would cause quotas to increase from their present levels to levels where they would no longer

operate as a limitation well before the ten-year transition was completed. The important point was the effect of quota growth on the restraint, particularly in view of the slower growth rate in the domestic markets. Over the ten-year time-span, for many or all of the quotas that were currently being filled, the quota growth would cause them to no longer be true restraints.

Application of the Transitional Safeguard Mechanism

19. Article 6 of the ATC recognizes that during the transition period it may be necessary to apply the transitional safeguard mechanism 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.

20. In the review of the application of the safeguard mechanism in the first stage of the implementation of the ATC, some Members considered that the introduction of an exceptionally large number of safeguard measures in the first year of the Agreement could not be considered as sparing use of the safeguard, particularly when, in most cases, the recourse had been found to be unjustified. As such there had been a manifestation of protectionism which resulted in a serious negative impact on the implementation of the ATC. This had caused great concern for some Members with respect to the manner in which the obligations of the ATC were being applied and, in more general terms, with respect to liberalization in this sector. It was, however, not only the number of safeguard measures which caused concern to these Members but also the trade distortive implications of such actions. In cases where recourse to Article 6 had been found to be unjustified, legitimate export trade had suffered unwarranted harassment. Requests for consultations on a safeguard action had often led to a range of potentially adverse implications, causing disruptive effects for existing exports and creating uncertainty in the marketplace with very serious impact on the well-being of the exporting Member's industry and economy. There was, in effect, a multiplier effect to the use of the safeguard, not only on the producer of the product in question but on export earnings, employment and overall prosperity associated with trade liberalization. Some Members felt that the use of transitional safeguards had not been sparing; additional restrictions imposed as a result of the application of transitional safeguards severely offset and hindered the progress towards achieving any effective implementation of the integration process. These Members considered that one particular Member had failed to comply with the requirements for invoking Article 6. These Members also considered that this had been confirmed by the TMB. None of the actions of this Member challenged before the TMB and/or the dispute settlement panels were found to be justified.

21. Some other Members considered it was the right of those Members which had fully complied with their relevant notification obligations to apply the safeguard mechanism in accordance with the ATC. In practice, only two Members had so far chosen to apply safeguards and there was a noticeable decreasing trend in the application of such measures in the recent period. These Members stated that the safeguard mechanism had been applied in full conformity with the provisions of the ATC. Of the 34 safeguard actions that had been taken, most were in the first six months of the ATC. Some Members considered that the significant change in the use of the safeguard from the first six months in 1995 should be noted by all Members. In addition to the quantitative change in the safeguard actions taken, the TMB and dispute settlement panels' findings had provided important clarifications regarding the application of the provisions of Article 6. It was also stated that, in the case of a Member that had chosen to retain the right to use Article 6, recourse to the transitional safeguard was an indication of changes in trade patterns. Noting that the purpose of Article 6 of the ATC was to address serious damage or actual threat thereof to domestic textile producers during a transition period, they made the point that if imports were to increase to the extent that they caused or threatened to cause serious damage, any Member could exercise its rights under Article 6.

22. The comprehensive report of the TMB provides information on the application of the transitional safeguard mechanism in Section III, with comments and observations being provided in Sub-Section G.

23. The Council observed that recourse to safeguard actions under the Agreement had been made by two Members. It noted the concerns expressed by exporting Members and the panel decisions with respect to two of these safeguard actions by one Member, and the guidance that these decisions give when taking such actions. Recognizing the right of Members to use the safeguard provisions of the ATC, the Council recalled the Ministerial Declaration at Singapore that such use, in accordance with ATC provisions, should be as sparing as possible.

Application of GATT 1994 Rules as Defined in Articles 2, 3, 6 and 7 of the ATC, Respectively

24. Under this heading, the Council exchanged views on other measures in respect of trade in textiles and clothing, including the changes made in rules of origin by one Member, as well as its proposal to maintain export visa requirements for these products after the quotas had been removed. It also discussed the application of anti-dumping measures on textile and clothing products by another Member and issues related to circumvention, customs formalities and market access.

25. As regards the changes in rules of origin relating to textiles and clothing by one Member, some Members considered that these changes were having a disruptive effect and were causing serious problems in the administration of quotas. Administrative regulations such as rules of origin were as powerful a tool for protectionism as the quota system and the overall effect of the new rules of origin had been to make access to that market more difficult for exporters. A number of Members expressed their concern over the unilateral imposition of these rules and the apparent inconsistency of this action with the Agreement on Rules of Origin, the ATC and Article I of GATT 1994. Consequently, there had been a negative contribution to progressive liberalization, further upsetting the balance of rights and obligations. In sum, the changes in rules of origin had upset the balance of rights and obligations, adversely affected access, impeded full utilization of quotas and had disrupted trade in textiles and clothing from exporting Members.

26. The Member concerned explained that the rules of origin had been implemented quite smoothly as there had been more than adequate time for exporters to prepare for the implementation of these rules. There had been no violation of the MFN principle, the provisions were universal and applied to all Members. The ATC contained specific provisions on consultation procedures and the concerned Member remained ready to consult with any Member that felt it had a problem with the rules of origin changes.

27. The comprehensive report of the TMB provides information on changes in rules of origin, including comments by the TMB in Section VI, paragraphs 254 to 264.

28. The Council noted the concerns of some Members on issues involving rules of origin under Article 4 of the ATC. It called on Members to use the mechanisms available in the WTO, including those under the ATC providing for consultations, with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments when addressing matters on rules of origin, so that the balance of rights and obligations between the Members concerned is not upset.

29. In the discussion, some Members also mentioned other administrative requisites which they considered to be inconsistent with the objective of trade liberalization in this sector. Among these were bond requirements being enforced by a Member for shipments from companies suspected of being involved in the transshipment of goods. Customs had also increased the minimum bond amounts for all textile and clothing importers for goods imported from all sources which, in turn, increased the cost of imports. The increase in paperwork and cost for importers from such administrative measures

would adversely affect buyers' decisions for sourcing products from various suppliers. Reference was also made to possible cutbacks being made by a Member in certain quotas and/or group limits in lieu of trade accounted for by products which were to be integrated at the beginning of the second stage in January 1998. Any reduction in quota levels as a result of the adjustment could adversely affect the possibilities for development of exports in the non-integrated portions of categories as well as for the utilization of flexibilities by the exporting Member. Any decision to carry out adjustments without prior consultations with the Members concerned would be contrary to the principle and procedures contemplated in Articles 4.3 and 4.4 of the ATC.

30. In response to the latter point, the Member concerned confirmed that such proposals had been made to the Members on which the integration was going to have an effect on either group limits or part categories that had been integrated. It was considered that the proposals the Member concerned had put forward were reasonable and consistent with Article 4 of the ATC.

31. The comprehensive report of the TMB provides information on the administration of restrictions in Section VI.

32. The provisions concerning market access in Article 7.1 state that as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round to take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to, *inter alia*, achieve improved market access for textile and clothing products, ensure the application of policies relating to fair and equitable trading conditions as regards textiles and clothing, and avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons.

33. Some Members noted that in certain Members little had been done to improve access conditions and in some cases there had been tariff increases, the introduction of specific duties, minimum import pricing regimes, labelling and certification requirements and the maintenance of balance of payments provisions affecting textiles and clothing. It was important that improved access be achieved in real terms. Concerns existed that, while the stages of integration to 1 January 2005 will result in the disappearance of all restraints, certain Members will have done little to improve access to their own markets.

34. Other Members noted that such market access could not be considered as a pre-requisite for the removal of the MFA restrictions, and that no problem regarding non-fulfilment of specific commitments undertaken by the Members during the Uruguay Round had been raised in the appropriate WTO bodies. They felt that these issues should be dealt with under the relevant provisions of GATT 1994 in the appropriate WTO bodies. Some Members felt that the reciprocal approach advanced by one Member at offering more meaningful integration in exchange for greater market access in exporting developing countries was not justified.

35. The comprehensive report of the TMB provides information on the topic of market access in Section VIII, Sub-Sections D and E.

36. As part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, the Council recalled the provisions of Article 7.1 of the ATC and called on all Members to take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to, *inter alia*, achieve improved market access to markets for textile and clothing products or through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities.

37. With reference to anti-dumping actions, some Members were concerned in particular that the largest number of actions taken by one Member had been targeted at textile products and often involved products which were subject to quantitative restrictions under the ATC. Those Members expressed concern about the way and the pattern in which anti-dumping measures were initiated in respect of textiles and clothing. In practice double protection was being exercised through this type of action. The use of anti-dumping action against products under quota and repeated actions against the same products touched the very essence of the objective of trade liberalization which the ATC was meant to bring about and could be considered as tantamount to trade harassment. The application of anti-dumping actions, while continuing to invoke the provisions of the ATC, would appear to be uncalled for and a negative contribution to progressive liberalization, further upsetting the balance of rights and obligations embodied in the ATC.

38. One Member stated in reply that it applied its anti-dumping legislation, which was fully in conformity with WTO rules, in a transparent and non-discriminatory manner across all sectors. No special provisions existed for the textiles sector and there was no pattern in respect of this sector or Members. The Member concerned noted that imports affected by anti-dumping duties represented 0.32 per cent of total imports in this sector in 1996. An anti-dumping or subsidy investigation must be opened upon receipt of a complaint containing prima facie evidence of dumping or subsidization and resulting injury. The Member concerned, noting that the ATC did not condone dumping, invited any Member to avail itself of consultations under the relevant WTO Agreement. Some Members indicated that any Member had the right under the WTO to use anti-dumping measures whenever the circumstances called for it, whether for products covered by the ATC or for any other product.

39. The comprehensive report of the TMB provides information on anti-dumping measures in Section VIII, paragraphs 287 and 299.

40. Recalling the concerns of some Members regarding the use of trade measures in respect of textile and clothing products, including those which were already under restraint, the Council called on Members to observe the relevant WTO provisions so as to ensure the application of policies relating to fair and equitable trading conditions regarding textile and clothing products in areas including, *inter alia*, dumping and anti-dumping rules and procedures.

41. Several Members brought before the Council the proposal of a Member to maintain visa requirements on textiles and clothing products which would be integrated into GATT. They said that such a measure would be against the letter and spirit of the ATC. They considered that an essential consequence of the integration of restricted products was the elimination of the specific requirements applied in connection with the import or export of these products due to the existence of quotas. Such requirements included those related to the issuances of visas by exporting Members. While export visas in respect of products restrained under the ATC could be justified as administrative arrangements under Article 2.17 of the ATC, once such products were integrated into GATT 1994, the ATC ceased to be applicable and the normal disciplines of GATT 1994 should apply to such products. This measure would also give rise to important issues in connection with the application of non-discriminatory treatment under the GATT (Article I), fees and formalities (Article VIII) and publication and administration of trade regulations (Article X), and would have implications for the integration process.

42. In response, the concerned Member stated that there were no grounds for concern among exporting Members on this issue. It had been proposed that exporting Members voluntarily retain the use of export visas for integrated products but this was not a mandatory requirement. Either party could terminate the visa arrangement in whole or in part. The concerned Member remained available to any Member with concerns in this area and expected that it would be possible to reach mutually satisfactory arrangements.

43. The Council noted the concern of exporting Members in relation to the proposal of a Member to maintain visa requirements on textile and clothing products which would be integrated into GATT 1994.

Other Issues Relating to the Implementation of the ATC

44. A number of Members referred to Article 1.2 of the ATC which provided that Members would use Articles 2.18 and 6.6(b) of the ATC 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 field of textiles and clothing trade. A footnote to this provision stated that to the extent possible, exports from a least-developed country Member may also benefit from this provision. However, they noted that in the implementation of Article 2.18, the methodologies used by only one of the Members maintaining restraints of increasing the respective growth rates first by 16 per cent and then by 25 per cent had fulfilled the requirements of Article 1.2. They noted that two Members maintaining restraints had applied only a 25 per cent increase. These Members made reference to the observation that the results in terms of market access in the first stage would have been improved if the methodology chosen for the advancement by one stage of the growth rates had included the growth factors of the first stage, as done by one Member (refer to paragraph 47 below). They considered that the term "advancement by one stage" in Article 2.18 did not mean substitution of the second stage growth factor for the first stage growth factor. The stages had cumulative effect and it was incidental that the growth enhancement factors for later stages were higher than in earlier stages, therefore, the growth factor for Stage 2 was to be applied in addition to the Stage 1 growth factor. Aside from this technical aspect, Article 2.18 should be implemented both within the context and general meaning of the ATC which was liberalization of trade and the purpose of the special provisions regarding small suppliers, that is to provide significant increases in access to them in terms of advancement by one stage of the growth rates with a view to contribute to the future possibilities of developing their trade. Some Members also noted that, in the application of safeguard measures by a Member, involving Members considered to be small suppliers, account had not been taken of the specific requirement in Article 6.6(b) to provide differential and more favourable treatment.

45. In response to these points, other Members considered that they had met their obligations and had implemented the provisions of Article 2.18 faithfully. One Member confirmed that it had increased the growth rates first by 16 per cent and then by 25 per cent. Some other Members considered that these matters, in general, had not been the subject of consultations and concern was expressed that some Members were bypassing the provisions and procedures in the ATC and bringing the matters directly to the Council. As regards the application of Article 2.18, the intent of the language of this Article was that "advancement" should mean substitution of the second stage growth rate for the first stage growth rate, not cumulation of the first and second stage growth rates. In this way, small suppliers would receive a meaningful increase in their market access by "front-loading" these considerably faster growth rates. In addition one Member had extended Article 2.18 to six additional Members by applying this provision on the basis of 1991 and 1994 imports, whereas Article 2.18 refers only to applying this provision on the basis of 1991 imports.

46. In response to the comment that certain Members were bypassing the ATC provisions and procedures and were bringing matters to the Council directly, it was pointed out by some Members that the Council's role was not to duplicate the work of the TMB but that the mandate to oversee ATC implementation required the Council to ensure that the stipulated objectives of the Agreement would be fulfilled, namely, an integration process progressive in character and liberalization of trade. Furthermore, multilateral rules constrained what might be agreed bilaterally. Where a measure was not challenged bilaterally, or even where a measure was endorsed in a bilateral agreement, it did not by any means follow that the measure in question was consistent with multilateral disciplines.

47. The comprehensive report of the TMB provides information on the implementation of the provisions of Articles 2.18 and 6.6(b) in Section IV, Sub-Section D and Section IX, Sub-Section B.

48. With respect to the treatment of the least-developed country Members, some Members pointed out that certain least-developed countries had benefitted from the provisions of Article 2.18 while one Member had not. This was discriminatory as between least-developed countries and inconsistent with the objectives of the ATC. The Member stressed the importance of taking into account the special concerns of the least-developed Members in order to ensure improved market access for their products.

49. One Member maintaining restraints indicated that it maintained no restrictions in respect of least-developed countries, the exports of which normally benefitted from a zero duty rate under the GSP or other preferential arrangements. With respect to two other Members maintaining restraints, they indicated that they took this obligation seriously and had implemented it. In particular, they had provided considerably higher growth rates for the least-developed Member referred to in paragraph 48 above. In addition one Member had recently removed the restraints on one of the most important export categories for the one least-developed Member that did not qualify under the specific provisions of Article 2.18.

50. The comprehensive report of the TMB provides information on the implementation of provisions relating to least-developed country Members in Section IX, Sub-Section A.

51. The Council noted the initiatives announced by Members to positively address the concerns expressed by least-developed country Members at the High Level Meeting on Least-Developed Countries held in Geneva in October 1997.

52. Some Members made reference to Article 1.4 of the ATC which states that the particular interests of cotton-producing exporting Members should, in consultation with them, be reflected in the implementation of the provisions of the Agreement. These Members noted that the Members maintaining restraints had not allowed special concessions to cotton-producing, exporting countries which would have been in conformity with the letter and spirit of the ATC.

53. In response, with respect to the case of cotton-producing Members, two Members maintaining restraints considered that they were in full compliance with the ATC having held consultations with these exporters. In the case of the third Member maintaining restraints, it also considered that it had acted fully in compliance with this provision. No-one had approached it on the matter, possibly because only a few of its restraints were based on fibre content; nevertheless, it remained ready to enter consultations if any other Member so wished.

54. The comprehensive report of the TMB provides information on cotton-producing, exporting Members in Section IX:C.

55. The Council recalled the provisions of the ATC in favour of small suppliers, new entrants, least-developed country Members and cotton-producing exporting Members, and reiterated the importance of the full implementation of these provisions.

56. Some Members stated that there was a continuing problem with circumvention that showed no sign of diminishing over time. One Member pointed out that there had been a steady increase in the number of court cases in that country where exporters had systematically circumvented the restraints on textile imports. These Members considered that the exporting countries involved had a responsibility to increase their vigilance in combatting this problem.

57. The comprehensive report of the TMB provides information on the provisions of the ATC relating to circumvention in Section VII.

58. The Council noted the concern of some Members with regard to issues relating to circumvention and reiterated the importance of full observance of the provisions of this Agreement.

59. Reference was also made to the importance of all Members fully meeting their notification obligations in a timely manner. Notifications were important for transparency but also had elements of legal rights and obligations. In respect of new restrictions introduced subsequent to the ATC coming into effect, some Members expressed concern that these had not been notified in detail either to the TMB or to any other WTO body. The Member concerned recalled that this matter was under examination in a more general context in the Committee on Regional Trade Agreements and notification requirements were being complied with.

60. The comprehensive report of the TMB provides information on compliance with notification obligations in Section X.

61. 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.

62. Some Members considered that the process of overseeing the implementation of the ATC would be facilitated if the Council were to establish a more structured and continuous process. They raised the possibility of an interim review under the same terms as provided for in Article 8.11. Some other Members considered that no change was required since the ATC already provided a clear and proper framework for the oversight function of the ATC. They also noted that Members already have the right to raise textiles issues in the Council at any point considered necessary.

63. The Council emphasized the importance of its overseeing and of 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.